

ISLAMIC LAW SERIES

4

النكاح و الطلاق

AUTHENTIC WAY
OF THE

Marriage & Divorce

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| | |
|--------------------------------------|-----------|
| FOREWORD | 1 |
| CHAPTER 1 : MARRIAGE IN ISLAM | 3 |
| Definition | 4 |
| Aspects of Marriage | 8 |
| Philosophy and Benefits | 10 |
| CHAPTER 2 : WAY OF MARRIAGE | 15 |
| Choosing a Wife | 16 |
| Forbidden Women | 19 |
| 1. Permanently Forbidden | 19 |
| A. Due to blood Relation | 19 |
| B. Due to Marital Relation | 20 |
| Aspects of Forbidden | 23 |
| C. Due to Breastfeeding | 24 |
| Nursing Conditions | 26 |
| D. Daughter of an accused | 28 |

| | |
|--------------------------|----|
| 2. Temporarily Forbidden | 29 |
| Elements of Marriage | 34 |
| Conditions of Marriage | 35 |
| Appreciated Manners | 39 |
| Dowry | 42 |
| Semi-mandatory | 43 |
| Types of Dowry | 44 |
| Limits of Dowry | 44 |
| Payments of Dowry | 47 |
| Dowry System | 49 |

CHAPTER 3 : ASPECTS OF MARRIAGE

| | |
|----------------------|----|
| Time Bond Marriage | 51 |
| Dating | 53 |
| Engagement | 56 |
| Pre-Marriage looking | 57 |
| Looking a Bridegroom | 58 |
| Polygamy | 58 |

CHAPTER 4 : FAMILY LIFE

| | |
|-------------------|----|
| Rights of Husband | 62 |
| Rights of Wife | 68 |

CHAPTER 5 : DIVORCE IN ISLAM

| | |
|-------------------------|----|
| What is Divorce | 77 |
| Philosophy of Divorce | 78 |
| Legalization of Divorce | 81 |

CHAPTER 6 : THE WAY OF DIVORCE

| | |
|-------------------------------|----|
| Conditions of Divorce | 82 |
| Types of Divorce | 85 |
| A. Based on Impact of Divorce | 86 |
| i. Retreatable | 86 |
| ii. Separatable | 86 |
| iii. Strongest | 87 |
| B. Based on Ways of Divorce | 87 |
| i. Best Way | 88 |
| ii. Moderate Way | 89 |
| iii. Innovative Way | 90 |
| C. Based on Words of Divorce | 90 |
| i. Clear Words | 90 |
| Effect of these words | 91 |
| ii. Indicative Words | 91 |
| Effect of these words | 92 |
| Some Usual Indicatives | 92 |

| | |
|---------------------------|----|
| D. Based on Appearance | 93 |
| i. By Words | 93 |
| ii. By Writing | 93 |
| ii. By Signals | 94 |
| iv. By Emissary | 94 |
| v. By Numbers | 94 |
| Three Divorces at once | 96 |
| vi. By Imposing Condition | 98 |
| Pre-requisites | 99 |



CHAPTER 7 : ASPECTS OF SEPARATION

| | |
|---|-----|
| Husband | 101 |
| Wife | 101 |
| Mutual Understanding | 103 |
| Cursing | 104 |
| Swearing | 107 |
| i. For Four Months | 108 |
| ii. For Forever | 108 |
| Disappearance of Husband | 109 |
| Defect in Husband | 110 |
| Simulating Wife with an unlawful Women | 111 |

CHAPTER 8 : AFTER THE DIVORCE

| | |
|--------------------------|-----|
| Life after Divorce | 114 |
| Iddah | 115 |
| i. With Menstrual | |
| Period | 115 |
| ii. With Delivery | 116 |
| iii. With Months | 117 |
| iv. No Iddah | 118 |
| Requirements of Iddah | 118 |
| i. Forbidden Proposing | 119 |
| ii. Forbidden Marriage | 119 |
| iii. Forbidden to go out | 120 |
| iv. Providing Expenses | 121 |
| v. Forbidden to adorn | 121 |
| Remarriage | 122 |
| i. Retreatable Divorce | 123 |
| ii. Separable Divorce | 124 |
| ii. Strongest Divorce | 124 |
| Halala | 124 |
| Requirments | 125 |

BIBLIOGRAPHY 126

INDEX 131

The End



JANNATI KAUN?

FOREWORD



JANNATI KAUN?

Exalting the endless Blessings of Almighty Allah and praising our noble Prophet Muhammed (Peace and Blessings be upon him), the fourth book of 'Islamic Law Series' which deals one of the most practiced family matter, "Marriage and Divorce" is being humbly presented to our new generations and English readers alike.

In this short format of book, I tried my best to maintain the same way, as other books of this series, of presenting the topics in a logical, suitable, and easily understandable manner for young readers, supporting with reliable authentic sources of Islamic Law and avoiding purposely unnecessary discussions.

I hope that this book will play a positive role in making the couples familer to each other and enjoy a

better and comfortable life based on love, respect, and mutual understanding. In my humble opinion, this book is the best gift for a newly wed couple, as well as for those who have been tied with the marriage contract since long.

I am grateful to Ms. Sabah Akbani for going through the manuscript and typing the English portion of it.

May Allah, the Exalted, accept our efforts and help us understand each other to have a fruitful life in this world as well as Hereafter.

Ghulam Zarquani

Director

Raza Educational Circle

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JANNATI KAUN?

CHAPTER ONE



MARRIAGE IN ISLAM

JANNATI KAUN?

The basic concept of marriage is not something new from the perspective of Islamic theology, as it is a common phenomenon that has been widely practiced by the followers of almost all known religions on the face of the earth. However, there are certain distinguished characteristics of marriage under the shade of Islamic fundamental values - from its simple way of performance and noble cause, to its far-reaching healthy effects on the society in general.

In this chapter, we will discuss the definition of marriage, its significance, purpose, and difference aspects for an eligible person to tie a knot in a bond, depending on his personal physical capabilities and financial status.

DEFINITION:

“Nikaah” refers to a physical relationship between a man and a woman. But from an Islamic perspective, it refers to a mutual contract between a man and a woman that helps them to enjoy each other in a manner allowed by Islamic law.

This definition depicts as clearly as a bright sun during mid-day that a marriage between two people of the same sex is illegal and out of the boundaries of Islamic theology that have been set up for Muslims by Allah, the Exalted and his Beloved Prophet (Peace be upon him).

Allah the Exalted says:

﴿ وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً ۚ ﴾ 1

[And amongst His signs is that He created for yourselves mates, that you may attain calm unto them and placed between you love and compassion.]

Referring to the types of mates, Allah, the Exalted says:

﴿ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ ... ﴾ 2

[Therefore, marry whom you like out of women...]

SIGNIFICANCE:

In order to maintain the prevailing structure and beauty in this world, a continued growth in the human population with a moderate base is seemingly necessary. Pertaining to this reality, our religious fundamental

1. Holy Quran, Chapter:30, Verse: 21

2. Holy Qur'an, Chapter: 4, Verse: 3

resources gave high priority to its importance and discussed it in a logical way.

Allah, the Exalted says:

﴿ وَاللَّهُ جَعَلَ لَكُم مِّنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُم مِّنْ أَزْوَاجِكُمْ بَنِينَ وَحَفَدَةً وَرَزَقَكُمْ مِنَ الطَّيِّبَاتِ ۚ ﴾ 1

[And Allah has created for you your mates from among yourselves, and made for you - out of them - sons and daughters and grandchildren, and provided for you sustenance of the best.]

Giving the importance of marriage to those who may physically afford it, Allah, the Exalted says:

﴿ وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۚ ﴾ 2

[And marry those among you who are single, and the virtuous ones among yourselves, male or female.]

Marriage is considered as half of the faith itself:

﴿ إِذَا تَزَوَّجَ الْعَبْدُ فَقَدْ كَمَلَ نِصْفَ الدِّينِ، فَلْيَتَّقِ اللَّهَ فِي النِّصْفِ الْبَاقِي ۚ ﴾ 3

[The Beloved Prophet of Allah (Peace be upon him) said: When a person marries, he has completed half of the faith, so let him fear Allah regarding the remaining half.]

Because of the marriage, a person becomes eligible to have the luminous blessings of Almighty Allah and His sacred help extended to him:

﴿ ثَلَاثَةٌ حَقٌّ عَلَى اللَّهِ عَوْنُهُمْ: الْمَكَاتِبُ الَّتِي يُرِيدُ الْإِدَاءَ وَالنَّكَاحُ الَّتِي يُرِيدُ الْعِفَاقَ، وَالْمُجَاهِدُ فِي سَبِيلِ اللَّهِ ۚ ﴾ 4

1. Holy Qur'an, Chapter: 16 Verse: 72

2. Holy Qur'an, Chapter: 24, Verse: 32

3. Shoabul Iman, Vol: 4, Page: 382

4. Tirmidhi, Vol:5, Page: 239

[Three persons have their rights on Almighty Allah to be helped; a bonded slave who wants to pay off, a marriage seeker who has the intention of keeping himself away from indulging into an illegal activity, and one who is doing Jihad for the sake of Almighty Allah.]

Furthermore, the marriage has startling effects on pushing the Muslim Community towards the legal boundaries of Islamic theology.

Our Beloved Prophet Muhammad (Peace and Blessings be upon him) said:

﴿ يَا مَعْشَرَ الشَّبَابِ مَنِ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ فَإِنَّهُ أَغْضُ لِلْبَصَرِ وَأَحْسَنُ لِلْفَرْجِ وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وَجَاءٌ ﴾ 1

[O' young people! Those who can take care of a wife should marry, for it helps him lower his gaze and preserves him from immortality; but those who cannot should observe fasting, for it is a means of suppressing sexual desire.]

Our Beloved Prophet (Peace be upon him) not only encouraged us to marry, but rather he himself married and practically declared it as a way of him.

﴿ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: النَّكَاحُ مِنْ سُنَّتِي، فَمَنْ لَمْ يَعْمَلْ بِسُنَّتِي فَلَيْسَ مِنِّي وَتَزَوَّجُوا فَإِنِّي مُكَاثِّرٌ بِكُمْ الْأُمَّةَ ﴾ 2

[The Noble Prophet of Allah (Peace and Blessings be upon him) said: Marriage is my way of living. Therefore, whosoever does not act according to my Sunnah is not from Me. Marry, so that my population would be increased across nations because of you...]

1. Bukhari, Vol: 2, Page: 673

2. Ibn-e-Maja, Vol: 1, Page: 592

On the Day of Judgment there will be one hundred twenty rows of those who enter into Paradise. Out of them, eighty rows will belong to the nation of our Beloved Prophet (Peace be upon him) and the remaining forty rows will be shared by other nations of all Prophets (Peace and Blessings be upon them all).

﴿ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: أَهْلُ الْجَنَّةِ عِشْرُونَ وَمِائَةٌ صَفٌّ،
هَذِهِ الْأُمَّةُ مِنْ ذَلِكَ ثَمَانُونَ صَفًّا ﴾ 1

[Our Noble Prophet (Peace be upon him) said: People of Paradise will be sorted in one hundred and twenty rows, and eighty of them will belong to this nation.]

It is a great favor of Almighty Allah to couples – husband and wife – that they have an unimaginable, fascinating attachment to each other.

﴿ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: لَمْ تَرَ لِلْمُتَحَابِّينِ مِثْلَ النِّكَاحِ ﴾ 2

[The Beloved Prophet (Peace be upon him) said: You do not see any other couples as loving as those who have been through marriage.]

Furthermore, in an utmost beautiful and pleasant way of expression, the Holy Qur'an uncovers the secrecy of the closed attachment between a husband and his wife, as it states;

﴿ هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ ﴾ 3

[They are your garments and you are the garments for them.....]

Here, the word “garments” indicates a unique, inner

1. Musnad Ahmed, Vol: 6, Page: 497

2. Mishkat, Vol: 2, Page: 202

3. Holy Qur'an, Chapter:2, Verse: 187

relationship between the husband and wife, as the garments cover up every single aspect of the body. In this way, they are supposed to cover up the usual sour relationship, unhealthy behavior, and shortcomings of each other under a soft cloak of a mutual, amicable understanding.

ASPECTS OF MARRIAGE:

During the discussion about the significance of marriage, it became clear that getting married is the noble way of our Beloved Prophet Muhammad (Peace and Blessings be upon him). But its physical status keeps changing depending on an individual's personal circumstances and financial situation. Following logical measures, these aspects are as follows:

[i] Mandatory & [ii] Semi-Mandatory

If a person is inclined towards indulging into a situation that would lead him to have illegal marital pleasure for sure, while he is able to afford the marriage and fulfill its necessary requirements according to the Islamic theology, then marriage would be Mandatory (فرض) for him. However, if he merely thinks of committing adultery, then marriage is regarded for him as Semi-Mandatory (واجب) 1

[iii] Stressed Sunnah

In a usual situation when one can afford the marriage and fulfill its requirements in a proper way, then marriage is considered for him as a Stressed Sunnah (سنت مؤكدة) – a way of the Beloved Prophet Muhammad (Peace be upon him). It means if one does not go through with a marriage

1. See. Durr-e-Mukhtar, Vol: 3, Page: 3

he would be considered a sinner. On the other hand, if he performs marriage with the intention having children and as a means of keeping himself away from adultery, he would be benefitted with rewards.

﴿أَمَّا وَاللَّهِ إِنِّي لَا خُشَاكُمُ اللَّهَ، وَأَتَّقَاكُمُ لَهُ، وَلَكِنِّي أَصُومُ وَأَفْطِرُ وَأَرْقُدُ
أَتَزَوِّجُ النِّسَاءَ، فَمَنْ رَغِبَ عَنْ سُنَّتِي فَلَيْسَ مِنِّي﴾¹

[Of course, by Allah! I fear Allah more than you and I am more sincere towards Him than you, but I observe fasting and sometimes give it up too. I pray and sleep, and I marry with women. Therefore, one who keeps away from my Sunnah is not from Me.]

[iv] Prohibited & [v] Disliked

If one is confident of being unable to take care of his wife and provide the necessary requirements of marriage, then it is strictly prohibited (حرام) for him.

However, if he merely feels incompetent of a successful marriage, then it is regarded as disliked (مكروه) for him to get married. Almighty Allah says:

﴿وَلَيْسَتَعْفِيفُ الذِّينَ لَا يَجِدُونَ نِكَاحًا حَتَّى يُغْنِيَهُمُ اللَّهُ مِنْ فَضْلِهِ﴾²

In addition, the last portion of the Hadith also supports this logical aspect of marriage.

﴿يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ

وَجَاءُ﴾³

[O' young people! but those who cannot afford it should observe fasting as a means of suppressing sexual desire.]

1. Mishkat, Vol:1, Page: 88

2. Holy Qur'an, Chapter:24, Verse: 33

3. Bukhari, Vol: 2, Page: 673

BENEFITS:

Along with the order of seeking marriage following the way of our Beloved Prophet Muhammad (Peace be upon him), we have several benefits and rewards by Almighty Allah. Some of them are as follows:

[i] Marriage is an honorable and respectable way to have children. In western culture, there are some cases involving couples that have children even before their legal marriage. As a result, these children are usually left unsupervised. Because of their improper etiquette and education, the number of criminal incidents is increasing much higher than others in western societies. Therefore, we confidently believe that the legal marriage is the only way to have children.

[ii] The pleasure of our Beloved Prophet (Peace be upon him) is in seeking children.

﴿ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: تَزَوَّجُوا الْوَدُودَ الْوَلُودَ فَإِنِّي مُكَاثِرٌ

بِكُمُ الْأَمَمَ ۝ 1

[The Prophet of Allah, the Exalted (Peace be upon him) said: Marry the loving and fertile woman, for I will outdo the nations because of your numbers.]

[iii] By seeking children, a parent intends to have the blessing of Almighty Allah after their death – since the supplications of their children will be at work for them.

﴿ إِذَا مَاتَ الْإِنْسَانُ، انْقَطَعَ عَمَلُهُ إِلَّا مِنْ ثَلَاثٍ: صَدَقَةٌ جَارِيَةٌ أَوْ عِلْمٌ يُنْتَفَعُ بِهِ

أَوْ وَلَدٌ صَالِحٌ يَدْعُو لَهُ ۝ 2

1. Sunan Abu Dawood, Vol: 6, Page: 47

2. Muslim, Vol: 11, Page: 71

[The Prophet of Allah (Peace be upon him) said: When a person dies, his work comes to an end except from three sources: an ongoing charity for which he established, knowledge which is being benefitted from, or a righteous offspring who makes supplication for him.]

[iv] Children will be given permission to intercede for their parents on the Day of Judgment.

﴿ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: مَا مِنْكُمْ إِمْرَأَةٌ تُقَدِّمُ ثَلَاثَةً مِنْ

وَلَدِهَا إِلَّا كَانَ لَهَا حِجَابًا مِنَ النَّارِ، فَقَالَتْ امْرَأَةٌ: وَاثْنَيْنِ؟ فَقَالَ: وَاثْنَيْنِ ﴾ 1

[The noble Prophet of Allah (Peace be upon him) said: Any woman whose three children have died, will find those children as protectors against Hell. Then a woman asked: What if one has two? He replied: And two as well.]

In one of the other narrations of the above Hadith, “children” were explained as those who die before reaching adulthood. 2

An immature fetus will also have the privilege to intercede for his parents.

﴿ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: إِنَّ السَّقَطَ لِيُرَاغِمُ رَبَّهُ إِذَا أَدْخَلَ

أَبْوِيهِ النَّارِ، فَيُقَالُ: أَيُّهَا السَّقَطُ الْمُرَاغِمُ رَبَّهُ أَدْخَلَ أَبْوَيْكَ الْجَنَّةَ، فَيَجْرُهُمَا

بِسَرَرِهِ حَتَّى يَدْخِلَهُمَا الْجَنَّةَ ﴾ 3

[The Beloved Prophet (Peace be upon him) said: An immature fetus will make arguments with his Lord upon looking at his parents entering Hell, till it will be commanded for his parents to have an entry into Paradise.

1. Bukhari, Vol: 1, Page: 49

2. See, Majmuz Zawaid, Vol: 3, Page: 86

3. Ibn-e-Maja, Vol: 1, Page: 513

Therefore, pulling them through his belly-intestine, he will take them into Paradise.]

[v] By properly taking care of his family members, one receives excellent rewards by Allah the Exalted:

﴿ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: إِنَّكَ مَهْمَا أَنْفَقْتَ عَلَى أَهْلِكَ مِنْ نَقَقَةٍ فَإِنَّكَ تُوجَرُ فِيهَا حَتَّى اللَّقْمَةِ تَرْفَعُهَا إِلَى فِيِّ امْرَأَتِكَ ﴾ 1

[The Prophet of Almighty Allah (Peace be upon him) said: Anything you spend on your family will be a source of reward, even a morsel of food which you raise to your wife's mouth.]

According to the Hadith, spending for the family with the intention of taking care of them in a nice way is considered one of the best actions - which leads to the greatest rewards than taking care of other members of Muslim community. **JANNATI KAUN?**

﴿ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: دِينَارٌ أُعْطِيَتْهُ فِي سَبِيلِ اللَّهِ، وَدِينَارٌ أُعْطِيَتْهُ مُسْكِينًا، وَدِينَارٌ أَنْفَقْتَهُ عَلَى أَهْلِكَ، قَالَ: الدِّينَارُ الَّذِي تُنْفِقُهُ عَلَى أَهْلِكَ أَعْظَمُهَا أَجْرًا ﴾ 2

[The Beloved Prophet (Peace and Blessings be upon him) said: A dinar you spend in the way of Allah, a dinar you spend on a needy person, and a dinar you spend on your family. From the perspective of reward, the greatest of them is the one you spend on your family.]

[vi] A woman gets enormous rewards and blessings of Almighty Allah because of her pregnancy, delivery, and breastfeeding to her baby.

1. Musnad Ahmad, Vol: 1, Page: 280

2. Shoabul Iman, Vol: 6, Page: 414

﴿ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: الْمَرْأَةُ إِذَا حَمَلَتْ كَانَ لَهَا خَالُ أَجْرِ الصَّائِمِ الْقَائِمِ الْمُخْبِتِ الْمُجَاهِدِ فِي سَبِيلِ اللَّهِ وَإِذَا ضَرَبَهَا الطَّلُقُ فَلَا تَدْرِي الْخَلَائِقُ مَا لَهَا مِنْ الْأَجْرِ وَإِذَا وَضَعَتْ كَانَ لَهَا بِكُلِّ مَصَّةٍ أَوْ رَضْعَةٍ أَجْرُ نَفْسٍ تُحْيِيهَا وَإِذَا فَطَمَتْ ضَرَبَ الْمَلَكُ عَلَى مَنْكَبَيْهَا وَقَالَ اسْتَأْنِفِي الْحَمْلَ ﴾ 1

[The Prophet of Allah, the Exalted (Peace be upon him) said: When a woman becomes pregnant, she would have the reward like the reward for one who fasts, prays during night, and performs Jihad in the way of Allah. Along with this, no one can think of the reward a woman receives during delivery pain. After delivery, she would receive the reward for every drop of milk she feeds as she gives a new life to someone. And when she stops breastfeeding, an angel taps her on the shoulder and says to resume pregnancy again.]

[vii] Marriage helps to keep a couple from prohibited activities between a man and a woman. 2

[viii] Because of the marriage, a couple righteously expects a strong and stabilized financial situation, as the enormous blessings of Almighty Allah turn towards them.

It is narrated that a couple had been passing through unimaginable, dire financial crisis. Once, the husband came back to his home and requested for his wife to provide something to eat. His wife, knowing his starving condition, said: Let me see the kitchen. Upon entering the kitchen, a giant pot of chicken surprised her. On the other side, her manual grinding machine was moving by itself to produce wheat flour. Out of happiness, she quickly

1. Jame-ul-Masaneed, Vol: 7, Page: 460

2. See, sub-topic: Significance

emptied the pot of chicken and cleaned the grinding machine. The narrator added that our Beloved Prophet (Peace be upon him) said: If she had used the wheat flour without emptying it, she would have found it running till the Last Day.] 1



JANNATI KAUN?

1. See, Musnad Ahmed, Vol: 3, Page: 151.

CHAPTER TWO



WAY OF MARRIAGE

In the previous chapter, we were encircling around the courtyard of marriage knocking each door from its definitions, luminous significance, and various aspects to its far-reaching benefits. Now, in this section of our discussion, we will get inside the house of marriage and discuss the marriage ceremony thoroughly from each and every corner of it.

To better understand the whole process of marriage, we will place some sub-topics and discuss accordingly, based on the authentic Islamic resources which are approved by the great scholars of Hanafi school of Islamic jurisprudence.

CHOSING A WIFE:

Prior to the marriage contract, a brief understanding of the criteria for choosing a good bride is highly necessary. Providing general criteria for common people, our Beloved Prophet (Peace be upon him) said:

﴿ تَنْكَحُ الْمَرْأَةُ لِأَرْبَعٍ: لِمَالِهَا، وَلِحَسَبِهَا وَلِجَمَالِهَا وَلِدِينِهَا، فَاظْفَرْ بِذَاتِ الدِّينِ، تَرِبْتُ يَدَاكَ ﴾ 1

[A woman is usually married for her four qualities: for her property, family background, beauty, and religiousness. Prefer her religiousness over all, and you would be in good hands.]

It is true that the first three qualities (property, family background, and beauty) are eye-catching and attractive, but in turn, their outcomes are heartbreaking. Unraveling their dire consequences, the Beloved Prophet (Peace and Blessings be upon him) said:

﴿ لَا تَنْكِحُوا النِّسَاءَ لِحُسْنِهِنَّ، فَعَسَى حُسْنُهُنَّ أَنْ يُرْدِيَهُنَّ، وَلَا تَنْكِحُوهُنَّ لِمَوَالِهِنَّ فَعَسَى أَمْوَالُهُنَّ أَنْ تُطْغِيَهُنَّ، وَانْكِحُوهُنَّ عَلَى الدِّينِ، وَلَا مَةَ سَوْدَاءٍ خَرَقَاءُ ذَاتَ دِينَ أَفْضَلُ ﴾ 2

[Do not perform marriage with girls for their beautiful appearance, as it may possibly turn into a devastating situation; nor with girls for their financially strong position, as it may possible make them arrogant. Rather, marry for their religiousness. Indeed a black uncivilized, but religious, girl is always the best.]

1. Muslim, Vol: 10, Page: 44

2. Musnad Bazzar, Vol: 6, Page: 413

Along with this, one should read the following hadith too.

﴿ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: مَنْ تَزَوَّجَ امْرَأَةً لِعِرْضِهَا لَمْ يَزِدْهُ اللَّهُ إِلَّا ذُلًّا، وَمَنْ تَزَوَّجَهَا لِمَالِهَا لَمْ يَزِدْهُ اللَّهُ إِلَّا فَقْرًا، وَمَنْ تَزَوَّجَهَا لِحَسَبِهَا لَمْ يَزِدْهُ اللَّهُ إِلَّا دَنَاءَةً، مَنْ تَزَوَّجَ امْرَأَةً لَمْ يُرِدْ بِهَا إِلَّا أَنْ يَغُصَّ بَصْرَهُ وَيُحْصِنَ فَرْجَهُ أَوْ يَصِلَ رَحِمَهُ بَارَكَ اللَّهُ لَهُ فِيهَا وَبَارَكَ لَهَا فِيهِ ﴾ 1

[The Prophet (Peace be upon him) said: whosoever marries a girl because of her high status, Allah does not increase but in his humiliation, and whosoever marries for her financial stability, Allah does not increase but in her financial crises, and whosoever marries for her high ranked family background, Allah does not increase but in his ordinary status; however one who marries with her keeping the intention of saving his eyes from sins, his private parts from becoming involved in unlawful activities, or to strengthen the kinship, then Allah, would bless upon him for her and upon her because of him.]

Summarizing the message of the above Hadith, we can easily find that a husband should prefer a girl's religiousness over any other qualities.

For an easy understanding, we will numerate the criteria that enable a wife to create a healthy, pleasant, and religious environment inside the home.

[i] Being a religious girl as it is clearly mentioned in the above Hadith.

[ii] Being of a lovely nature.

Our Beloved Prophet (Peace be upon him) said:

﴿ تَزَوَّجُوا الْوُدُودَ ﴾ 2

1. Majmauz Zawaid, Vol: 4, Page: 467

2. Abu Dawood, Vol: 6, Page: 47

[Marry lovely girls...]

[iii] Being a virgin.

The Prophet (Peace and Blessings of Almighty Allah be upon him) said:

﴿ عَلَيْكُمْ بِالْأَبْكَارِ فَإِنَّهُنَّ أَعَذْبُ أَفْوَاهًا وَ أَنْتَقُ أَرْحَامًا وَ أَرْضَى بِالْيَسِيرِ ﴾ 1

[Marry virgins as they are soft-spoken, more fertile, and exceedingly inclined to happiness with less comfort.]

[iv] Being more fertile

It is based on the hadith mentioned earlier.

[v] Being beautiful.

When our Beloved Prophet (Peace be upon him) was asked about the best woman, he replied saying:

﴿ الَّتِي تُسِرُّهُ إِنْ نَظَرَ..... ﴾ 2

[One who makes you happy when you look at her...]

[vi] Being from a family which is religious and well-known to show patience. 3

[vii] Not being from a close relative.

This is based on a Hadith which was narrated by Shaikh Rafei (May Allah be pleased with him):

﴿ لَا تَنْكِحُوا الْقَرَابَةَ الْقَرِيبَةَ فَإِنَّ الْوَلَدَ يُخْلَقُ ضَاوِيًا ﴾ 4

[Do not marry with close relatives as the child becomes weak...]

[viii] Not being not the daughter of a woman who is accused of adultery. 5

1. Ibn-e-Maja, Vol: 1, Page: 598

2. Musnad Ahmed, Vol: 3, Page: 170

3. See Fiqhul Islami wa Adillatuhu, Vol: 7, Page: 14,

4. Talkhees-ul-Habeer, Vol: 3, Page: 144

5. See, Raddul Muhtar

FORBIDDEN WOMEN:

Some women are not allowed to have marriage with certain men due to blood relations or marital closeness. Considering the desperate importance, we will discuss it in detail using sub-topics.

Basically, “forbidden women” are categorized into two sections.

1. Permanently Forbidden (حرمة مؤبدة):

Women that are not allowed to ever marry certain people are called Permanently Forbidden. Under this category, there are three kinds of women.

A. Forbidden due to blood relations

The women who are forbidden for a man due to close relations with him are of four types:

[i] Ascendants, no matter how far – like mother, maternal grandmother, paternal grandmother, etc.

Allah the Exalted says:

﴿ حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ ﴾ 1

[Your mothers are forbidden for you...]

[ii] Descendants, no matter how far – like daughters, granddaughters, etc.

Allah the Exalted says:

﴿ حُرِّمَتْ عَلَيْكُمْ وَبَنَاتُكُمْ ﴾ 2

[...And your daughters are not allowed for you to marry with...]

1. Holy Qur'an, Chapter: 4, Verse:23

2. Same Reference

[iii] Descendants from the parents, no matter how far – like sisters, half-sisters, daughters of sisters & brothers, etc.

Allah the Exalted says:

﴿ حُرِّمَتْ عَلَيْكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ ﴾ 1

[..... daughters of brothers and sisters are not allowed for you.....]

[iv] Siblings of male and female ascendants, no matter how far – like paternal and maternal aunts, great aunts, etc.

Allah the Exalted says:

﴿ حُرِّمَتْ عَلَيْكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ ﴾ 2

[.....Your father's sisters and your mother's sisters are not allowed for you.....]

B. Forbidden due to marital relations:

Those who are forbidden permanently due to marital relations are of four types:

[i] Wives of ascendants, no matter how far – like father's wife, grandfather's wife, etc.

For this type of forbidden women, physical sexual intercourse of ascendants with their wives is not required, but rather a completion of the marriage makes their ascendants forbidden forever.

Allah the Exalted says:

﴿ وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ إِنَّهُ كَانَ فَاحِشَةً وَ

مَقْتًا وَسَاءَ سَبِيلًا ﴾ 3

1. Holy Qur'an, Chapter:4, Verse: 23

2. Same Reference

3. Holy Qur' an, Chapter: 4, Verse:22

[And do not marry women whom your fathers married, except what has been passed earlier. It is indeed an obscene, hateful, and evil way.]

In the above verses of the Holy Qur'an, the word "marriage" has been used to express the notion regarding the wives of ascendants. Therefore, scholars did not add the condition of a physical sexual intercourse with the wife as a pre-requisite. 1

[ii] Wives of descendants, no matter how far – like wives of the sons or grandsons. Here again, physical intercourse with the wife is not required as a condition.

Allah the Exalted says:

﴿وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ﴾ 2

[Wives of your bloods sons...are not allowed for you...]

Although "blood sons" are mentioned here, it also includes sons due to breastfeeding also.

﴿فَإِنَّهُ يَحْرُمُ مِنَ الرِّضَاعَةِ مَا يَحْرُمُ مِنَ النَّسَبِ﴾ 3

[Narrated by Sayyeda Aisha (May Allah be pleased with her) that what becomes forbidden due to blood relationship, also makes unlawful that which is due to breastfeeding.]

In the above verse of the Holy Qur'an, two categories; those who have been illegally raped by ascendants or descendants, are also included, as it is clear by the basic norm of the verse. 4

1. See, Badae Sanae, Vol: 2, Page: 387, Amjadia

2. Holy Qur'an, Chapter:4, Verse:23

3. Muslim, Vol:10, Page: 18

4. See, Badae, Vol: 2, Page: 388, Amjadia

[iii] Ascendants of wives – like mother-in-law, without any condition of physical sexual intercourse with the wife.

Allah the Exalted says:

﴿ وَأُمَّهَاتُ نِسَائِكُمْ ﴾ 1

[And mothers of your wives...are forbidden for you...]

Explaining this category of Forbidden Women, our Beloved Prophet (Peace and Blessings of Almighty Allah be upon him) said:

﴿..... أَيَّمَا رَجُلٍ تَزَوَّجَ امْرَأَةً طَلَّقَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا أَوْ مَاتَتْ عِنْدَهُ فَلَا

يَحِلُّ لَهُ أَنْ يَتَزَوَّجَ أُمَّهَا ﴾ 2

[.....Whosoever marries a girl and divorces her without having physical sexual intercourse or she dies, then her mother is forbidden for him.]

[iv] Descendants of wives, no matter how far – like step-daughters and their children, with the conditions of having sexual intercourse with the wife. Therefore, if one marries a woman and divorces her before having sexual relationship with her, then it is allowed for him to marry her daughters.

Allah the Exalted clearly mentioned it, saying:

﴿... بَنَاتُكُمُ اللَّاتِي فِي حُجُورِكُمْ مِنْ نِسَائِكُمُ اللَّاتِي دَخَلْتُمْ بِهِنَّ، فَإِنْ لَمْ

تَكُونُوا لَهُنَّ بَنَاتٌ فَلَا جُنَاحَ عَلَيْكُمْ ﴾ 3

[Forbidden upon you...and your step-daughters under your guardianship born of your wives with whom you have had sexual relationship, but if not, then there is no sin upon you.....]

1. Holy Qur'an, Chapter: 4, , Verse: 23

2. Badae, Vol:2, Page: 383

3. Holy Qur'an, Chapter: 4, Verse:23

The word “under your guardianship” has been mentioned only to portray the usual expectations and not as a literal pre-condition. Therefore, it does not make a difference whether they are physically under their step-father’s care or not.

For additional evidence, one may read this Hadith, as our Beloved Prophet (Peace be upon him) said:

﴿..... أَيَّمَا رَجُلٍ تَزَوَّجَ امْرَأَةً طَلَّقَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا أَوْ مَاتَتْ عِنْدَهُ فَلَا بَأْسَ أَنْ يَتَزَوَّجَ بِنْتَهَا﴾ 1

[Whosoever marries a girl and divorces her without having sexual intercourse or she dies, than it is allowed for him to marry her daughters.]

We may summarize all of the above four categories of Forbidden Women due to marital relationship as:

﴿الْعَقْدُ عَلَى الْبَنَاتِ يُحَرِّمُ الْأُمَّهَاتِ وَالْأَخْوَءَ بِالْأُمَّهَاتِ يُحَرِّمُ الْبَنَاتِ﴾ 2

[Mere marriage with daughters forbids their mothers; however, physical sexual intercourse with them also forbids their daughters.]

Aspects of Forbidden Women:

Earlier, we pointed out that not only marriage in a general situation or physical intercourse in a specific situation will make some women forbidden, but rather, all actions that are logically interpreted as leading to a sexual, lustful situation will also have the same role in declaring women forbidden - legally. Based on this explanation, the following actions are considered an active cause in placing women in the list of “Forbidden Women.”

1. Badae, Vol:2, Page: 383

2. See, Lubab, Vol: 1, Page: 403

- Touching, kissing, hugging, or looking at the private part of a woman with lust. In this situation, a girl must be nine years or older; however, if she is under nine years old, then she will have no effect on declaring other women forbidden. 1

- Whether the above considerable actions are willingly or unwillingly, they will have the same consequence.

For example, if a woman who wants to awake her husband unwillingly touches his son with lust, she would be considered forbidden for her husband.

Likewise, if a husband does that same and touches her daughters with lust. 2

C. Forbidden due to breastfeeding:

After a brief discussion about forbidden women due to close relationship and marital aspects, we will touch upon a very important topic that is generally overlooked by Muslims.

Referring to the importance of this matter, the Holy Qur'an says:

﴿وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُم مِّنَ الرَّضَاعَةِ﴾ 3

[Forbidden upon you...your wet nurse mothers and your sisters by nursing.....]

Although the above verse of the Holy Qur'an mentions only "mothers" and "sisters" by breastfeeding, there are some sayings of the beloved Prophet (Peace be upon him) which include a few other women in the list of Forbidden Women due to breastfeeding. A very popular one is this:

1. See, Durr-e-Mukhtar, Vol: 3, Page: 3

2. See, same reference as above

3. Holy Qur'an, Chapter: 4, Verse:23

﴿فَإِنَّهُ يَحْرُمُ مِنَ الرِّضَاعَةِ مَا يَحْرُمُ مِنَ النَّسَبِ﴾ 1

[Breastfeeding makes forbidden what is forbidden due to blood relations.]

As narrated by Sayyeda Aisha (May Allah be pleased with her), once her uncle, due to breastfeeding, came to visit her. She refused to let him in until she asked the Prophet of Allah, the Exalted (Peace and Blessings be upon him) about it and he said:

﴿ إِنَّمَا هُوَ عَمَّكَ فَأَذِنِي لَهُ ﴾ 2

[Give him permission because he is your uncle.]

Therefore, based on the above explanation, the following categories of women are considered forbidden for a specific related person:

[i] His female ascendants through nursing; like nursing mother, etc.

[ii] His descendants through nursing; like his breastfed daughter no matter how far, and the daughter of his breastfed son.

[iii] Descendants of parents through nursing; like breastfed sisters and daughters of breastfed brothers.

[iv] Close descendants of grandfather or grandmother, like paternal and maternal aunts, etc.

[v] Mothers of the wife due to nursing, regardless of having sexual intercourse with the wife or not.

[vi] Daughters of wife, no matter how far, due to nursing— with the condition of having sexual intercourse with the wife.

1. Muslim, Vol: 10, Page: 18

2. Ibn-e-Maja, Vol: 1, Page: 627

[vii] Wives of the father or grandfather, no matter how far, due to nursing – regardless of having sexual intercourse with the wife or not.

[viii] Wives of son or daughter's son, no matter how far, due to nursing – regardless of having sexual intercourse with the wife or not. 1

From the above categories, there are two exceptions widely mentioned in authentic books:

[i] Mother of brother or sister due to nursing.

For example, 'A' fed 'B' while 'A' has a son 'E.' This son, 'E,' is allowed to marry the mother of 'B.'

[ii] Sister of son or daughter due to nursing.

For example, 'A' fed 'B' while 'B' has a sister 'C.' The husband of 'A' is allowed to marry the sister, 'C.' 2

Nursing conditions:

Merely pointing to the different aspects of forbidden women due to nursing would not be considered fruitful until a brief discussion about the practical application of nursing and its necessary conditions are done properly.

Following are the primary requirements for being a woman declared forbidden for a specific man:

[i] Being the milk of a woman, not blood, yellowish water, or anything else. Therefore, if two children had the milk of the same animal, then there will be no relationship between them based on breastfeeding. Likewise, if a child sucked the blood or yellowish water of a woman, then it is not something to worry about.

1. See for details, Bada'e, Vol: 2, Page: 389,

Durr-e-Mukhtar, Vol: 3, Page: 229

2. See, Bada'e, Vol: 4, Page: 3

[ii] Being the milk that goes inside the body either by sucking directly or by drinking from a pot. Therefore, merely taking the nipple into the mouth does not make a man forbidden for the woman.

[iii] Being the milk that goes inside the body either by mouth or by nose. Therefore, if the milk goes into the body through the ear, it will not be considered a reason for establishing a breastfeeding relationship.

[iv] Being the milk that does not mix up with any other liquid. However, if it was mixed with any liquid then the decision would be based on the quantity. If the milk of a woman is more than or equal to the other liquid, then it will suffice the reason for establishing a breastfeeding relationship, otherwise not.

[v] Being the breastfeeding during the first thirty months of a child, and if one is after the age of thirty months, then the breastfeeding relationship will not be established.

Allah the Exalted says:

﴿.....وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا﴾ 1

[The period of pregnancy and the end of breastfeeding is thirty months.]

[vi] Being the milk in any amount – regardless of its actual quantity. 2

Allah the Exalted says:

﴿.....وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ﴾ 3

[And your nursing mothers who fed you...]

1. Holy Qur'an, Chapter: 46, Verse: 15

2. See for reference on this topic.

Durr-ul-Mukhtar, Vol: 3, Page: 229,

3. Holy Qur'an, Chapter: 4, Verse: 23

The Qur'an does not specify any amount of the milk of a woman. Therefore, any quantity of the milk will be considered sufficient to establish a breastfeeding relationship.

This relationship based on nursing would be established by the just witness of either two men or one man & two women. Only women witnesses will not be considered enough; however, as a precautionary measure, actions would be taken according to their witnesses too. 1

Shaikh Uqba, son of Haris, married with the daughter of Abi Ihaab (May Allah be pleased with them), then a black girl came, claiming to him that she fed both of them. Shaikh Uqba informed the Prophet (Peace be upon him) about this. He did not respond, then he repeated the question twice. At last, the Prophet (Peace be upon him) advised him to leave her. 2

D. Daughter of an accused woman

A person who accused his wife of adultery is not allowed to marry her daughter, even though on the order of judge, her lineage was connected to her mother only and not to him. 3

This notion was supported by the following statement:

﴿مَضَّتِ السُّنَّةُ فِي الْمُتَلَا عَيْنَيْنِ أَنْ لَا يَجْتَمِعَانِ أَبَدًا﴾ 4

[According to Sunnah, accusers are to never be connected together.]

1. See, Tabeen Haqaaq, Chapter of Nikaah

2. See, Musnad Ahmed, Vol: 4, Page: 575

3. See, Bidaya, Vol: 3, Page: 199

4. Sunan Dar Qutni Vol: 3, Page: 192

2. Temporarily Forbidden (حرمة مؤقتة):

In the previous pages, we had a detailed discussion about the women a person is not allowed to marry at all. Here, we bring into the light the women who are forbidden temporarily.

[i] A woman who divorced thrice from her husband is not allowed to remarry with the same husband until she ties a knot with someone else. Once she is divorced after sexual intercourse with him, she would be able to remarry with her old husband after completion of Iddah (عدة) 1.

Allah the Exalted says:

﴿ فَإِنْ طَلَّقَهَا، فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ، فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ ﴾ 2

[Therefore, if one divorced his wife, he is not allowed to remarry her until she has married someone else. Then once he divorces her, it is not a sin on both of them for them to reunite if they are sure of keeping the limits ordained by Allah.]

As we mentioned earlier, sexual intercourse, at least once, is necessary with the second husband in order to be eligible to marry back with the old husband.

It is based on the instructions of the Beloved Prophet (Peace be upon him) to a lady who wished to remarry her old husband while she was under the marriage contract with someone else. Pointing to the second husband, the Prophet (Peace be upon him) said:

1. For explanation of Iddah, see Divorce part of this book.

2. Holy Qur'an, Chapter: 2, Verse: 230

﴿..... لَا، حَتَّى تَذُوقِي عُسَيْلَتَهُ وَيَذُوقَ عُسَيْلَتِكَ﴾ 1

[...you are not allowed to remarry with your old husband, until you have had sexual intercourse with this new husband.]

[ii] A woman who is already a wife of someone else or is passing through her Iddah.

﴿وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ.....﴾ 2

[Forbidden for you...married women...]

And for a woman who is passing through her Iddah, the following verse of the Holy Qur'an provides the base:

﴿وَلَا تَعْرِمُوا عُقْدَةَ النِّكَاحِ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ﴾ 3

[And do not marry until they complete their Iddah period.]

[iii] A woman who is not a Muslim, Jew, or Christian.

Therefore, marrying with any other women who is not a believer of these three heavenly religions is not allowed. Allah the Exalted says:

﴿وَلَا تَنْكِحُوا الْمُشْرِكِيْنَ حَتَّى يُؤْمِنَ﴾ 4

[And do not marry with idolatresses until they believe...]

Regarding the permission for marriage with women of People of the Book (اهل الكتاب), one may refer to this verse:

﴿.....وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ.....﴾ 5

[...And permissible for you...virtuous women of those who received the book before you...]

1. Muslim, Vol: 10, Page: 3

2. Holy Qur'an, Chapter: 4, Verse: 24

3. Holy Qur'an, Chapter: 2, Verse: 235

4. Holy Qur'an, Chapter: 2, Verse: 221

5. Holy Qur'an, Chapter: 5, Verse: 5

In principle, though it is allowed to be married with the women of People of the Book, due to other prevailing factors, authentic Muslim scholars do not encourage this practice and advise Muslims to avoid marrying with them.

As a supporting evidence for the notion of the scholars, one may listen to the advice of Syeduna Umar bin Khattab (May Allah be pleased with him) to Shaikh Huzaifa bin Yaman (May Allah be pleased with him) who married a Jewish lady in Madayan.

﴿ فَكَتَبَ إِلَيْهِ عُمَرُ أَنْ خَلَّ سَبِيلَهُ، فَكَتَبَ إِلَيْهِ حُذَيْفَةُ: أَحْرَامٌ هِيَ؟ فَكَتَبَ إِلَيْهِ عُمَرُ: لَا، وَلَكِنِّي أَخَافُ أَنْ تَوَاقِعُوا الْمُؤَمِّسَاتِ مِنْهُنَّ يَغْنَى الْعَوَاهِرَ ﴾ 1

[Therefore, Shaikh Umar bin Khattab (May Allah be pleased with him) wrote a letter advising him to divorce. Replying back to him, Shaikh Huzaifa (May Allah be pleased with him) asked: Is she forbidden? Shaikh Umar Faruq (May Allah be pleased with him) wrote back to him, saying: No, but I fear that following you, people would marry indecent of them.]

In another reporting, the grave concern of Shaikh Umar (May Allah be pleased with him) was mentioned in a very clear wording, as he said:

﴿..... فَإِنِّي أَخَافُ أَنْ يَّقْتَدِيَ بِكَ الْمُسْلِمُونَ، فَيَخْتَارُونَ نِسَاءَ أَهْلِ الذِّمَّةِ لِحَمَالِهِنَّ، وَكُنَّ بِذَلِكَ فِتْنَةً لِنِسَاءِ الْمُسْلِمِينَ ﴾ 2

[I fear that Muslims will follow you and marry with the women belong to the protected people by Muslim government due to their beauty. Therefore, it will be a troubled situation for the Muslim women.]

1. Ahkamul Quran, Vol: 2, Page: 327

2. Aasaar: Imam Muhammed, Chapter of Nikaah

Without a doubt, from the above discussion regarding the marriage with women of People of the Book, it is quite obvious that if performing the marriage with them was not in favor of Muslims at the reign of Shaikh Umar Faroque (May Allah be pleased with him) then after a much deeper, deteriorating cultural immorality in Western societies, why would this marriage not be discouraged?

Furthermore, the Holy Qur'an has only permitted marriage with them with the condition of "Muhsaanat" i.e. "chaste." Therefore, only those who are "chaste" amongst the women of People of the Book are allowed. In my opinion, this condition alone would eliminate the vast majority of such marriages which take place in the western world. In other words, it is practically impossible to find a "chaste" woman in their society. One may think that - as any sinner Muslim after making Tauba becomes pious - the women of People of the Book would also turn pious. Since asking repentance is an act of worship and worship would not be accepted without belief, then this pretext also does not make any difference.

[iv] Sister of the present wife and her forbidden family members

Allah the Exalted says:

﴿.....وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ ۗ﴾ 1

[Forbidden for you.....two sisters at the same time except for that which has already passed.....]

Likewise, the present wife's forbidden family members are not allowed to be under the same roof of a single husband.

Explaining this rule, our Prophet (Peace and Blessings of Almighty Allah be upon him) said:

﴿ لَا تَنْكِحُ الْمَرْأَةَ عَلَى عَمَّتِهَا، وَلَا الْعَمَّةُ عَلَى بِنْتِ أَخِيهَا، وَلَا الْمَرْأَةَ عَلَى خَالَتِهَا، وَلَا الْخَالَةُ عَلَى بِنْتِ أُخْتِهَا ﴾ 1

[It is prohibited to join in a marriage at the same time for: a woman and her paternal aunt, or a paternal aunt and her niece, or a woman and her maternal aunt, or a maternal aunt and her niece.]

Based on the above mentioned Hadith and other related to the same topic, scholars have set up a general rule for the forbidden women under the same marriage contract: i.e. it is not permissible to have two women in the marriage at the same time for the same husband if one of them is considered – imaginably – male, the marriage between them is prohibited.

[v] A Fifth wife

It is not permissible for a Muslim to have more than four wives at the same time.

Allah the Exalted says:

﴿ وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ، فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبْعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً... ﴾ 2

[And if you fear that you cannot deal justly with the orphan girls, then marry women of your choice, two or three, or four, but if you fear that you are not able to deal justly with them, then only one.....]

1. Abu Dawood, Vol:6, Page: 71

2. Holy Qur'an, Chapter:4, Verse: 3

ELEMENTS OF MARRIAGE:

After a wife is chosen based on previously-discussed conditions and criteria, a couple is ready to initiate the process of performing a marriage.

As the marriage is like a contract between two parties, there are two basic elements (Rukn). A "rukhn," according to the Hanafi School of jurisprudence, is something upon which the existence of something else is dependent as being part of it. These basic elements are:

- [i] Offer (ایجاب)
- [ii] Acceptance (قبول)

The offer is made either from the bride or the groom, whereas the acceptance is performed by the other party.

Both the offer and the acceptance should be done either verbally or through writing or with a clear indication. 1

In some cases, girls do not speak clearly due to their modesty and stay silent - which would be interpreted as their willingness for approval.

When Syeda Aisha (May Allah be pleased with her) asked the Prophet (Peace be upon him) about a virgin girl who usually does not respond verbally through decency, replying to her, the Prophet (Peace be upon him) said:

﴿ إِذْنُهَا صُمَاتُهَا ﴾ 2

[Her silence is itself her approval.]

The "offer" and "acceptance" both can be said in different forms.

1. See, Fiqhul Islami wa Adillatuhu, Vol: 7, Page: 37

2. Muslim, Vol: 9, Page: 172

The "offer" may be a past tense: "I offered myself to be under the marriage contract with you."

Or it may be in a present tense: "I am offering myself to be under the marriage contract with you."

Lastly, it may be in a commanding form: "Accept me under the marriage contract with you."

In each circumstance, the "acceptance" must be said in a past tense: "I have accepted." 1

CONDITIONS OF MARRIAGE:

Along with the basic elements, there are some specific conditions for a marriage to be valid according to the Islamic jurisprudence. A "condition" is something upon which the existence of something else is dependent as being not a part of it. These conditions are:

[i] Being sane as to understand the marriage and its basic obligations. Therefore, if an insane person or a minor who is unable to recognize the marriage attempts to perform it, it would not be regarded as valid. 2

[ii] An adult, as if an underage child gets married, it would be dependent on the approval of the guardians from both parties.

Since the marriage is, in other words a great responsibility, it is not expected from minors. They are logically not expected to be able to make appropriate decisions. However, if their guardians join them as their own decisions, then it is quite natural that the new relationship would be fruitful. 3

1. See, Badae, Vol: 2, Page: 346

2. See, Same reference, Vol: 2, Page: 348

3. See, Same reference

However, if the guardian is not the biological father or grandfather of the girl, then she would have the option of either keeping the marriage or ending it after she reaches puberty.

This action is supported by the decision of the Beloved Prophet of Almighty Allah (Peace be upon him) regarding the marriage that was initiated by Qudama bin Mazoon for his niece with Abdullah bin Umar (May Allah be pleased with them) when she had yet to reach her puberty.

﴿ فَخَيَّرَهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بَعْدَ الْبُلُوغِ، فَأَخْتَارَتْ نَفْسَهَا ﴾

1 1

[The Prophet (Peace be upon him) gave her the right regarding her marriage. Then she had chosen to end it.]

[iii] Being in the presence of two adult or sane witnesses; either should be males or one male & two females.

Our Beloved Prophet (Peace be upon him) said:

﴿ لَا نِكَاحَ إِلَّا بِشَاهِدَيْنِ ﴾ 2

[A marriage could not be validated without having two witnesses.]

Witnesses should be Muslims for Muslim couples; however, if the bride belongs to the People of the Book, then witnesses amongst them are also legally approved.

Allah the Exalted says:

﴿ وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا ﴾ 3

[And Allah will never grant to the unbelievers a way over the Believers.]

1. Badae, Vol: 2, Page: 466

2. Same Reference, Vol: 2, Page: 379

3. Holy Quran, Chapter:4, Verse:141

Along with these, witnesses should not be deaf and should be able to understand the process of marriage. 1

For an adult girl, presence of her guardian is not necessary as she has more rights on herself.

﴿ قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: لَيْسَ لِلْوَلِيِّ مَعَ الثَّيِّبِ أَمْرًا ﴾ 2

[The Prophet (Peace be upon him) said: A guardian has no decisive role in the matter of adult woman.]

For a clearer, more specific statement, one should listen to the following Hadith as the Prophet (Peace and Blessings be upon him) said:

﴿ الْآيِمُّ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا ﴾ 3

[An unmarried girl has more right on herself than her guardian.]

[iv] The "offer" and "acceptance" are done in the same sitting. In general, it means that the response from the second party must be immediate.

A marriage is regarded as a usual trading between two parties. Therefore, in the same way, the "offer" and "acceptance" must be done without any unnecessary pause. For example, when the offer is made to the bridegroom, if he stands up or implies any other action, his acceptance would not be considered valid.

However, if the offer was made to him through someone else while the bride was not present, then as soon as he has heard and accepted, it would be considered valid. 4

1. See, Badae, Vol: 2, Page: 379

2. Musnad Ahmed, Vol: 1, Page: 549

3. Muslim, Vol: 9, Page: 172

4. See, Bahar-e-Shariat, Vol: 7, Page: 16

[v] Accepting exactly what was being offered.

For example, Khadija was offered to someone and in response he said, "I accepted Fatima," then the marriage is not considered valid. On the other hand, if a dowry of one thousand US dollars was offered and he said, "I accepted her with a dowry of five hundred dollars," then the marriage would be regarded valid. However, if he increases the amount than what was offered, then it would be considered valid. 1

[vi] Obtaining the clear consent of the bride if she is an adult (بالف). Her guardian has no right to tie her to someone she does not like. 2

[vii] The marriage should be effective immediately.

Therefore, if the offer or the acceptance is made in an expression of the future, the marriage would not be regarded valid. For example, if the one making the offer says, "I will offer my daughter to be married to you" or in the acceptance one says, "I will accept her next month."

This condition makes it quite clear that the marriage itself is like any other business contract. So a deal is only regarded as valid when it has reached the point where it becomes physically effective. Therefore, both the "offer" and "acceptance" must be in a past tense.

[viii] Using a word that refers to the whole body as a whole, rather than a part, during the offer or acceptance.

For example, it would not be acceptable to say, "I have accepted both her hands." 3

1. See, Bahar-e-Shariat, Vol: 7, Page: 16

2. Refer to the previous chapter for the base of this notion.

3. See, Bahar-e-Shariat, Vol:7, Page: 18

APPRECIATED MANNERS:

After a detailed discussion on the pre-requisites of a valid marriage, it is time to list some of the appreciated manners for it.

[i] Being in public

Our Beloved Prophet (Peace be upon him) said:

﴿ اَعْلِنُوا النِّكَاحَ 1 ﴾

[Make an announcement for the marriage.]

[ii] Being inside the Masjid.

Our Beloved Prophet (Peace be upon him) said:

﴿ وَاجْعَلُوهُ فِي الْمَسَاجِدِ 2 ﴾

[Perform marriages in the Masjid...]

[iii] Having the marriage on a Friday.

Our Beloved Prophet (Peace be upon him) said:

﴿ إِنَّ يَوْمَ الْجُمُعَةِ سَيِّدُ الْأَيَّامِ وَأَعْظَمُهَا عِنْدَ اللَّهِ 3 ﴾

[Indeed, Friday is the chief of all days and the very best before Almighty Allah.....]

According to a Hadith, the second half of it is very significant for making supplications:

﴿ ... وَفِيهِ سَاعَةٌ لَا يَسْأَلُ اللَّهُ الْعَبْدُ فِيهَا شَيْئًا إِلَّا آتَاهُ مَا لَمْ يَسْأَلْ حَرَامًا... 4 ﴾

[The Prophet of Almighty Allah (Peace be upon him) said: During it, there is a specific time when Almighty Allah accepts whatever a person asks.]

Therefore, it is better to have the marriage on the last half of a Friday.

1. Sahih Ibn-e-Habban, Vol: 4, Page: 307

2. Tirmidhi, Vol: 4, Page: 154

3. Ibn-e-Maja, Vol:1, Page: 344

4. Musannaf Ibn-e-Shaiba, Vol:2, Page: 58

[iv] Having a khutba (خُطْبَة) before the process of acceptance.

Narrated by shaikh Abdullah bin Masood (May Allah be pleased with him) as he said:

﴿ عَلَّمَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ التَّشَهُّدَ فِي الصَّلَاةِ وَالتَّشَهُّدَ فِي الْحَاجَةِ..... ﴾ 1

[The Prophet of Allah (Peace be upon him) has taught us the way of reciting "Tashahhud" for the prayer and delivering a speech on occasion.....]

Along with this, companions of the Prophet (Peace be upon him) also used to deliver speeches for marriages. Shaikh Ibn-e-Umar (May Allah be pleased with him) used to deliver a speech starting with the Exalting blessings of Allah and reciting the Durood onto the Prophet, followed by a brief lecture regarding the importance of marriage. 2

For an additional supporting base, the following Hadith also provides a strong piece of evidence:

﴿ كُلُّ أَمْرٍ ذِي بَالٍ لَا يُبْدَأُ فِيهِ بِحَمْدِ اللَّهِ، فَهُوَ أَقْطَعُ ﴾ 3

[The Prophet of Allah (Peace be upon him) said: Every single important task that is not begun by praising Allah, is regarded as incomplete.]

[v] Being in the presence of just witnesses.

Emphasis is put on the importance of witnesses to be just in the following Hadith.

﴿ قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: لَا نِكَاحَ إِلَّا بِشَاهِدَيْنِ عَدْلٍ... ﴾ 4

1. Tirmidhi, Vol:4, Page: 178, M

2. See, Sunan Kubra, Vol: 10, Page: 441

3. Sahih Ibn-e-Habban, Vol: 1, Page: 74

4. Sunan Kubra, Vol: 10, Page: 328

[The Prophet (Peace and Blessings be upon him) said:
No marriage without... two just witnesses.....]

[vi] Mentioning the Dowry [مهر] during the process of marriage as a clarification to any ambiguity pertaining to the agreed-upon dowry between the two parties. 1

[vii] Greeting the new couples by making supplications for them.

﴿ عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كَانَ إِذَا رَفَأَ
قَالَ: بَارَكَ اللَّهُ لَكُمْ، وَبَارَكَ عَلَيْكُمْ وَجَمَعَ بَيْنَكُمَا فِي خَيْرٍ ﴾ 2

[It was narrated by Shaikh Abu Hurairah (May Allah be pleased with him) that the Prophet of Allah (Peace and Blessings be upon him) used to greet new couples saying: "Allah bless you, shower blessings upon you, and unite you both with righteousness."]

[viii] Having a party event (وليمة) hosted by the bridegroom after the marriage.

Our Beloved Prophet (Peace be upon him) said to Shaikh Abdur Rahman bin Aaf (May Allah be pleased with him) after his marriage:

﴿ أَوْلِمُّ وَلَوْ بِشَاةٍ ﴾ 3

[Have a party (Walima) as though it is of a sheep.]

[ix] Accepting the invitation of the Walima.

Our Beloved Prophet (Peace be upon him) said:

﴿ إِذَا دُعِيَ أَحَدُكُمْ إِلَى وَلِيمَةِ عُرْسٍ، فَلْيُجِبْ ﴾ 4

[When any one of you is invited to a Walima, you should accept it.]

1. Fiqhul Islami, Vol: 7, Page: 125

2. Ibn-e-Maja, Vol: 1, Page: 614

3. Same Reference, Vol: 1, Page: 615

4. Same Reference, Vol: 1, Page: 616

Inviting only the rich people and neglecting the poor is certainly not the way of Islamic tradition. Shaikh Abu Hurairah (May Allah be pleased with him) said:

﴿ شَرُّ الطَّعَامِ طَعَامُ الْوَلِيمَةِ يُدْعَى لَهَا الْأَغْنِيَاءُ وَيُتْرَكُ الْفُقَرَاءُ وَمَنْ لَمْ يُجِبْ نَقَضَ عَصَى اللَّهِ وَرَسُولَهُ ﴾ 1

[The worst food of a Walima is one in which only the rich people are invited and the poor are overlooked. And one who does not accept the invitation has indeed disobeyed Allah and His Prophet.]

[x] Making supplication while meeting the bride.

Our Noble Prophet (Peace be upon him) said:

﴿ إِذَا تَزَوَّجَ أَحَدُكُمْ امْرَأَةً..... فَلْيَقُلْ: اللَّهُمَّ إِنِّي أَسْأَلُكَ خَيْرَهَا وَخَيْرَ مَا جَبَلَتْهَا عَلَيْهِ، وَأَعُوذُ بِكَ مِنْ شَرِّهَا وَشَرِّ مَا جَبَلَتْ عَلَيْهِ..... ﴾ 2

[When any one of you gets married, you should say: "Allahumma inni as'aluka khairaha wa khaira ma jabalat alaiha, wa a'oozu bika min shar-ri ha wa shar-ri ma jabalat ha alaih..." - Oh Allah! I ask You for the best of her and the best of what she is on, and I seek refuge in You from the worst of her and the worst of what she is on.]

DOWRY (مهر):

The dowry, as mentioned earlier, is something that is being given to the bride by the bridegroom. It is nothing but an indication of his serious desire to care for her and fulfill every single obligation that is required from him regarding his family.

1. Ibn-e-Maja, Vol: 1, Page: 616

2. Abu Dawood, Vol: 6, Page: 196

Several terminologies have been used in the Holy Qur'an to highlight the importance of paying the dowry, like the word "charity."

﴿وَاتُوا النِّسَاءَ صَدُقَتِهِنَّ نِحْلَةً﴾ 1

[And hand over to the women their dowries with a good heart.....]

The word "compensation" has also been used:

﴿..... فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً﴾ 2

[Therefore, give them their compensation according to the agreement.]

As well as the word, "obligation":

﴿..... أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً...﴾ 3

[Or you prescribed to them an obligation....]

A. The dowry is semi-mandatory:

The dowry is semi-mandatory (واجب) in the terminology of Islamic jurisprudence. In the earlier mentioned verse of the Holy Qur'an, Allah the Exalted directed to us:

[And give women their dowries with a full heart.]

Not paying the dowry is considered a sin that causes horrible, dreadful punishment for the bride-groom.

﴿قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: مَنْ أَصْدَقَ الْمَرْأَةَ صَدَاقًا وَهُوَ مُجِمِعٌ

أَنْ لَا يُوفِّيَهَا إِيَّاهُ لَقِيَ اللَّهَ عَرُوجًا وَهُوَ زَانٍ...﴾ 4

1. Holy Qur'an, Chapter: 4, Verse: 4

2. Holy Qur'an, Chapter: 4, Verse: 24

3. Holy Qur'an, Chapter: 2, Verse: 236

4. Mojam Kabeer, Vol:8, Page:34

[The Prophet of Allah, the Exalted (Peace be upon him) said: Whoever prescribes the dowry for a woman with the intention of not paying it, would face Allah the Exalted as an adulterer.....]

B. Types of Dowry:

There are three types of dowries that can be paid.

[i] Simple Dowry (مهر مطلق)

Not mentioning any time period for the payment of the dowry.

[ii] Prompt Dowry (مهر معجل)

Paying before the marital relation.

[iii] Deferred Dowry (مهر مؤجل)

Mentioning a time frame for the payment of dowry.

It is also permissible to have a portion of the dowry as "prompt" and the rest of it as "simple" or "deferred." Whatever the types may be, it is a must for the dowry to be paid according to the amount agreed upon. However, it is the right of a bride to keep away from her husband in the case of an unpaid prompt dowry. 1

C. Limits of Dowry:

There is no maximum limit for the dowry. Allah the Exalted described the dowry in a "word" that cannot be bound in a fixed limit.

..... ﴿وَأَتَيْتُمْ إِحْدَاهُنَّ قِنْطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا، أَتَأْخُذُونَهُ بُهْتَانًا

وَأَثْمًا مُبِينًا ﴿ 2

1. See, Bahar-e-Shariat, Vol: 7, Page: 65

2. Holy Qur'an, Chapter: 4, Verse: 20

[And you have already given one of them a heap of gold; do not take back anything from it. Would you take it as a fraud and sin?]

Here, an interesting story is presented by scholars as evidence for the limitless dowry. Once, Shaikh Umar (May Allah be pleased with him) gave a speech asking women to limit their dowries and warned them to deposit whatever is more than four hundred Dirhams into the House of Wealth (بيت المال). Hearing this order, a lady went to him and referred to the above verse of the Holy Qur'an, arguing with him. Then, Shaikh Umar (May Allah be pleased with him) realized the fact and went back to the podium (ممبر) and said:

﴿ أَيُّهَا النَّاسُ إِنِّي كُنْتُ نَهَيْتُكُمْ أَنْ تَزِيدُوا النِّسَاءَ فِي صَدُقَاتِهِنَّ عَلَى أَرْبَعِمِائَةِ دِرْهَمٍ، فَمَنْ شَاءَ أَنْ يُعْطِيَ مِنْ مَالِهِ مَا أَحَبَّ ﴾¹

[O' people! I have prevented you from increasing the dowry of women on four hundred Dirhams, but one may give whatever he wishes out of his wealth.]

However, it is always appreciated to have a moderate dowry that can be easily paid. In Islamic tradition, a woman with a less dowry is honored and appreciated.

Our Beloved Prophet (Peace be upon him) said:

﴿ أَعْظَمُ النِّسَاءِ بَرَكَاتٍ أَيْسَرُهُنَّ صَدَاقًا ﴾²

[The best of the women for blessings are the ones whose dowries are less.]

In addition, the lesser amount of dowry is also regarded to be the best dowry.

1. Majmauz Zawaid, Vol: 4, Page: 521

2. Mustadrak Haakim, Vol: 2, Page: 194

The Prophet (Peace be upon him) said:

﴿ خَيْرُ الصَّدَاقِ أَيْسَرُهُ ﴾ 1

[The least dowry is the best dowry.]

At this point in the discussion, I'd like to share my own experience. In some cases, people purposely utter a huge amount of dowry merely with the intention of showing off their strong financial situation in society. This is of course against the teachings of Islam. Following the guidelines set up by our Beloved Prophet (Peace be upon him) is much better for us than a verbal, yet baseless promise of a huge amount - which, most of the times, is hard to fulfill.

However, it is not permissible to have a dowry less than 10 Dirhams.

Shaikh Ali (May Allah be pleased with him) said:

﴿ لَا مَهْرَ أَقْلُ مِنْ عَشْرَةِ دَرَاهِمَ ﴾ 2

[There is no dowry less than ten Dirhams.]

Ten Dirhams is equal to 2.75 Tola of silver. 3

Since it is not permissible to have a dowry amount less than ten Dirhams, if one has mentioned any less during the marriage, he would have no choice but to pay the full ten Dirhams to his wife. 4

However, if one does not prescribe any fixed amount of dowry, or refuses to pay during marriage, then a Similar Dowry (مهر مثل) would be paid.

1. Sunan Kubra, Vol: 11, Page: 3

2. Same Reference, Vol: 11, Page: 21

3. See, Waqarul Fatawa Vol: 3, Page: 54

4. See, Fathul Qadeer, Vol: 3, Page: 40

A similar dowry is one that would equal to the dowry of women from the wife's own family or others, with the same etiquettes and similar appearance as her. 1

D. Payment of Dowry:

Dowry is legally required to be paid in full after one of the three situations after marriage:

[i] The couple has sexual intercourse.

Allah the Exalted says:

﴿ وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَى بَعْضُكُمْ إِلَى بَعْضٍ ﴾ 2

[And how could you take it (the dowry back) when you have gone into each other.....]

Here, the word "Afdha" has been mentioned in the above verse that was interpreted to refer to sexual intercourse, by the commentators of the Holy Qur'an like Shaikh Abdullah bin Abbas, Shaikh Mujahid, and Shaikh Sudi (May Allah be pleased with the all). 3

[ii] The couple has met in a vacant area where involvement in sexual intercourse generally seems to not be unexpected (خلوت صحيحة).

For the above verse, the other opinion regarding the explanation of "Afdha" is "meeting in a vacant place." This meaning was also referred by Shaikh Ibn-e-Abbas, a well known authority in the field of Qur'an and its commentary (May Allah be pleased with him). 4

1. See, Bahar-e-Shariat, Vol: 7, Page: 57

2. Holy Qur'an, Chapter: 4, Verse: 21

3. See, Ahkame Leahkaamil Qur'an, Vol: 5, Page: 98

4. See, Rohul Maani, Vol: 4, Page: 442

With this, a very clear Hadith is also presented by scholars as a supporting base for this type of situation.

The Beloved Prophet (Peace and Blessings of Almighty Allah be upon him) said:

﴿ وَمَنْ كَشَفَ خِمَارَ امْرَأَتِهِ وَنَظَرَ إِلَيْهَا وَجَبَ الصَّدَاقُ، دَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ بِهَا ۝ 1 ﴾

[Whoever takes off the scarf of his wife and looks at her, dowry would become mandatory upon him - despite whether he has had sexual intercourse with her or not.]

[iii] Death of either one of them.

This refers to a newly-wed person who dies before mentioning the exact figure of dowry, and had not had a chance of having sexual intercourse with his wife. In this specific situation, Shaikh Abdullah bin Abbas (May Allah be pleased with him) ordained to have his wife paid Similar dowry (مهر مثل). Upon hearing this, Shaikh Maqil bin Senan (May Allah be pleased with him) said:

﴿ قَضَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي بَرُوعَ بِنْتِ وَاشِقٍ، امْرَأَةً مِّنْ مِّثْلِ الَّذِي مَا قَضَيْتَ ۝ 2 ﴾

[The Prophet of Allah (Peace be upon him) ordained exactly similar to what you have done, regarding the Barwa d/o Washique, a lady of our tribe.....]

This ordained of the Prophet of Almighty Allah (Peace be upon him) provides the logical base for one who died and could not mention the exact figure of the Dowry as well as had not sex with his wife.

1. Dar Qutni, Vol: 3, Page: 213

2. Tirmidhi, Vol: 4, Page: 231

DOWRY SYSTEM (جهيز):

We have just discussed the dowry and its related phenomenon in the light of authentic resources of Islam. The Dowry System refers to a dowry that was given to the bridegroom by the guardians of the bride. This custom is still widely practiced in Indo-Pak societies.

The supporters of the Dowry System frequently cite the marriage of Sayeda Fatima and Shaikh Ali (May Allah be pleased with them). In this marriage, our Beloved Prophet (Peace be upon him) arranged a humble gift for his daughter. As it was recorded by Shaikh Ali (May Allah be pleased with him):

﴿ جَهَّزَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَاطِمَةَ فِي خِمِيلٍ وَ قُرْبَةٍ وَوِسَادَةٍ
حَشُوهَا إِذْخَرٌ 1 ﴾

[The Prophet (Peace be upon him) proposed for Sayeda Fatima (May Allah be pleased with her) a sheet, a water holder, and a bed filled with grass.]

There are several other narrations with minor additions in the simple gifts. However, the word (جَهَّزَ) has been commonly used in almost all of them, which means "prepared." As a historical fact, Shaikh Ali (May Allah be pleased with him) had nothing but a she-camel, a sword, and a armor at the time of his marriage. In this situation, how would he be able to start his new marital life? Therefore, Our Beloved Prophet (Peace be upon him) realized his need and helped him with simple things. 2

1. Nesai Sughra, Vol: 6, Page: 445

2. See, Ziaun Nabi, Vol: 3, Page: 428

Another perspective of the "preparation" is that our Beloved Prophet (Peace be upon him) was the guardian of Shaikh Ali (May Allah be pleased with him) too. Therefore, it is no wonder that he helped the one who was under his blessed guardianship for a moderate start of the new marital life with his wife.

Therefore, referring this event that was an unusual circumstance, introducing a "complete dowry system" into a traditional Islamic marriage is wrong. Furthermore, demanding dowry by the bridegroom or his guardian is, with no doubt, oppression upon the family of the bride and an obvious deviation from Islamic teachings.



JANNATI KAUN?

CHAPTER THREE

ASPECTS OF MARRIAGE

JANNATI KAUN?

With the blessings of Almighty Allah and the mercies of our Noble Prophet (Peace be upon him), we have fully discussed the process of marriage and its related topics. In this chapter, we will touch upon different aspects of marriage including prevailing un-Islamic traditions, in order to complete our discussion on marriage.

TIME BOND MARRIAGE (موقتہ):

A time bond relationship between a woman and a man is based on mutual interest and worldly benefit.

Due to a desperate need for a temporary solution, this type of marriage was approved by Our Beloved

Prophet (Peace be upon him). However, it was restricted to a specific time period only. Later, it was declared unlawful forever. As evidence for both the permission and prohibition, several sayings of the Prophet of Allah (Peace be upon him) can be brought into light, but only two of them are recorded here:

﴿ يَا أَيُّهَا النَّاسُ إِنِّي كُنْتُ أَذْنْتُ لَكُمْ فِي الْإِسْتِمْتَاعِ مِنَ النِّسَاءِ، وَأَنَّ اللَّهَ قَدْ حَرَّمَ ذَلِكَ إِلَى يَوْمِ الْقِيَمَةِ ﴾ 1

[The Prophet of Allah, the Exalted (Peace be upon him) said: "O People! I had given you permission for having time-bond marriages with women; However, it was declared unlawful by Allah till the last day..."]

﴿ قَالَ سَبْرَةُ بْنُ مَعْبُدٍ: إِنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي حَجَّةِ الْوَدَاعِ نَهَى عَنْ نِكَاحِ الْمُتْعَةِ ﴾ 2

[Sabra bin Mabad (May Allah be pleased with him) narrated that the Prophet of Allah (Peace and Blessings of Almighty Allah be upon him) prohibited the practice of time-bond marriages on the farewell Hajj.]

Based on these and other authentic Hadiths, Muslim scholars around the world have unanimously restricted having this type of marriage. 3

Authentic Muslim scholars have also cited the following verse of the Holy Qur'an as a strong supporting reason for their collective decision about the prohibition of the time-bond marriage.

1. Muslim, Vol:9, Page: 157

2. Sunan Baihiqui, Vol: 10, Page: 485

3. See, Badae, Vol: 2, Page: 404

﴿ وَالَّذِينَ هُمْ لِأَفْوَاجِهِمْ حَافِظُونَ ۚ إِلَّا عَلَىٰ أَرْوَاجِهِمْ ۚ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ ۚ فَإِنَّهُمْ غَيْرُ مَلُومِينَ ۚ فَمَنْ ابْتَغَىٰ وَرَاءَ ذَلِكَ فَأَلَيْكَ هُمُ الْعَادُونَ ﴾ 1

[And who guard their modesty. Except with those joined to them in marriage or whom their hands possess, so they are free from blame. However, those whose desires exceed those limits are transgressors.]

This verse of the Holy Qur'an clearly suggests the two legitimate ways of having a sexual relationship: either by marriage or by holding war captives hostage. It forbids any other way - including time-bond marriages.

DATING:

An illegal relationship between a bride and a bridegroom prior to legal Islamic marriage is strictly forbidden and is a clear contradiction to the basic etiquettes of our religion. Walking, talking, going out to restaurants, or having fun together are all a part of Western culture. However, due to international media, this culture gradually began to envelop the whole world - including our Islamic societies.

Here, we will discuss some common area of the ashamed practice of Dating accompanying with our religious guide line repectively.

[i] Being alone: Warning against being alone with a woman whom one is eligible to legally marry with, our Beloved Prophet (Peace be upon him) said:

﴿ لَا يَخْلُونَ رَجُلٌ بِامْرَأَةٍ إِلَّا كَانَ ثَالِثَهَا الشَّيْطَانُ ﴾ 2

1. Holy Qur'an, Chapter: 23, Verses: 5-7

2. Tirmidhi, Vol: 6, Page: 321

[Whenever a person gets close to a strange woman in an area alone, no one can watch them. The third one always near them is Shaitan (evil).]

During the explanation of this Hadith, scholars went on to say that though a couple may not have the wrong intentions, an evil may certainly seize the moment to trap both of them into committing mistakes.

If, based on the above Hadith, it is clear that a couple is not allowed to be alone in an area, then how can the topic of dating be overlooked?

Being alone with a married woman whom a person is eligible to marry is also not allowed.

﴿ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: إِلَّا لَا يَبِيتَنَّ رَجُلٌ عِنْدَ امْرَأَةٍ ثَيِّبٍ إِلَّا أَنْ يَكُونَ نَكَاحًا أَوْ ذِمًّا مُحَرَّمًا 1 ﴾

[Our Beloved Prophet of Almighty Allah (Peace and Blessings be upon him) said: Do not spend nights with a married woman, unless if a person is her husband or is a person who is forbidden by law to marry her.]

[ii] Looking: Even looking purposely at a non-forbidden woman (غير محرم) is not allowed.

﴿ قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: يَا عَلِيُّ لَا تُتَّبِعِ النَّظْرَةَ النَّظْرَةَ، فَإِنَّمَا لَكَ الْأُولَى وَلَيْسَتْ لَكَ الْآخِرَةُ 2 ﴾

[Noble Prophet of Allah (Peace be upon him) said to Shaikh Ali (May Allah be pleased with him): "O Ali! You should not follow a look by another look - for the first is for you, and the second is against you."]

1. Muslim, Vol: 14, Page: 126

2. Musnad Ahmed Vol: 6, Page: 485

Furthermore, one who keeps himself away from looking at a woman would be rewarded with blessings of a spiritual sweetness by Almighty Allah. In a sacred Hadith (حديث قدسى), it is said:

﴿النَّظَرَةُ سَهْمٌ مِّنْ سِهَامِ إِبْلِيسَ، مَن تَرَكَهَا مِنْ مَّخَافَتِي، أَبْدَلْتُهُ إِيمَانًا يَجِدُ حَلَاوَتَهُ فِي قَلْبِهِ﴾ 1

[Looking is like an arrow from many arrows of evil. Whoever abstains from it due to his fear of Me, I will exchange it with a blessing which increases the sweetness of his belief in his heart.]

[iii] Touching and Chatting: Even touching a non-permissible woman is strictly prohibited. For a glimpse of this horrible sin, one may read the following saying of our Beloved Prophet (Peace be upon him):

﴿لَا يُطْعَنُ فِي رَأْسِ أَحَدِكُمْ بِمِخْيَاطٍ مِّنْ حَدِيدٍ خَيْرٌ لَهُ مِنْ أَنْ يَّمَسَّ امْرَأَةً لَا تَحِلُّ لَهُ﴾ 2

[For one of you to be stabbed in the head with an iron rod is better than touching a woman who is not permissible for him.]

Having telephone conversations or chatting through the internet with a fiancé are also not allowed. A frequent chatting sometimes leads a couple towards an embarrassing situation of committing illegal activities, as it is considered an another possible way of getting plunged into the state of sin.

1. Mojam Tabrani, Vol: 10, Page: 173

2. Same Reference, Vol: 20, Page: 211

In order to "get to know each other" for a successful marriage life, Westerners have crossed every single limit of moral etiquette, spirituality, and piety; yet their success in marriages have disastrously dropped to only 50% according to the media reports.

Therefore, dating does not guarantee a bright and successful marital life, but rather, it simply adds more and more sins to the register of deeds which in turn have the power to mess up the rest of a person's life.

ENGAGEMENT:

"Engagement" is in no way equal to the Islamic marriage or even a part of it. However, even, in some regions of the Islamic world, the engagement is interpreted as being a significant portion of the marriage. Therefore, prospective spouses are usually allowed to talk frequently, sit together, and have fun freely as they are considered to be a "married couple."

At this point, it must be made clear that no matter what words, promises, and commitments have passed between both parties, there is no legal relationship considered at all between them until the marriage contract has been physically transacted. Therefore, they are to each other as any other strange man and woman.

The saying of the Prophet of Almighty Allah (Peace and Blessings be upon him), which was mentioned earlier, forbids a man and a woman to be alone together. This instruction definitely includes even a couple who have had an engagement.

PRE-MARRIAGE LOOKING:

Basically, looking at a strange woman is prohibited. However, one who prospects a woman sincerely is allowed to have a look at her.

Shaikh Mughira (May Allah be pleased with him) proposed to a woman for marriage. Advising him, our beloved Prophet of Almighty Allah (Peace and Blessings be upon him) said:

﴿ اُنْظُرْ إِلَيْهَا، فَإِنَّهُ أَحْرَى أَنْ يُؤَدَّمَ بَيْنَكُمَا ﴾¹

[O, Moghira! See her, as it will strengthen closeness between you both.]

Since the purpose of looking is to decide whether he likes her or not, it is only permissible for him to see her face, palms, and feet. Therefore, during this period of time, she must continuously be well-covered except those specific parts.

Also, once the purpose of looking has been achieved in affirmation and a decision has been made, it is no longer permissible for him to see her again and again. This is because until the processes of the Offer and Acceptance have been done, all of the laws pertaining to men with strange women still apply to them.

Furthermore, this looking should not be in private where only the proposed bride and bridegroom are, but rather, it must be in the presence of anyone whose marriage with her is forbidden.

The following Hadith instructs this:

1. Tirmidhi, Vol: 4, Page: 152

﴿ لَا يَخْلُونَ رَجُلٌ بِامْرَأَةٍ إِلَّا وَمَعَهَا ذُو مَحْرَمٍ ﴾¹

[A man is not allowed to be alone with a woman where no one can watch them, except in the presence of a man whose marriage with the woman is legally prohibited (ذو محرم).]

Looking a Bridegroom:

The provisions of looking at a proposed bride are greater than looking at the bridegroom. However, if the greater one is allowed then it is logical that the lesser would also be allowed as well. Along with this, women have the same sense of preferences as men do.

Delivering a speech, Shaikh Umar (May Allah be pleased with him) said:

﴿ يَعْمِدُ أَحَدُكُمْ إِلَى بِنْتِهِ فَيُرَوِّجُهَا الْقَبِيحَ، إِنَّهُمْ يُحِبُّونَ مَا تُحِبُّونَ ﴾²

[One of you forces his daughter to marry with an ugly man, however, they like what you like.....]

Therefore, a girl may look at her fiancé following the same conditions as for a man to his proposed girl because it does not contradict the basic principles of Islamic theology.

POLYGAMY:

Because of the permission to have four wives at the same time, Muslims are often accused of being promiscuous. For a neutral study of Islamic perspective on polygamy, one should have deep knowledge about an Islamic family system.

1. Muslim, Vol: 9, Page: 92

2. Musannaf Abdur Razzaq, Vol: 6, Page: 158

Glancing at only the surface of this topic does not give a person enough logical reasons to justly come to a conclusion.

Although the short format of this book does not allow me to discuss this topic in great detail, this is a commonly misunderstood notion about Islam and Muslims, so I will point out some of the logical aspects with historical facts and human nature.

☆ Islam did not introduce polygamy. It was practiced in almost all parts of the world. Yes, Islam regulated it by limiting the number of wives.

☆ Polygamy is the best way of calming down a misbalanced society. It is a historical fact that the number of women is more than the number of men in the world due to wars, violence, and general crimes. According to the US census, the number of females was 144 million and the number of males was 138 million in 2002. Now, the obvious question is, where will these 6 million women go? Logically, they would have four choices:

- i. Letting them live without marriage.
- ii. Wiping them off the Earth.
- iii. Letting them have sex with whomever they wish without marriage.
- iv. Letting men marry more than one wife.

If anyone thoughtfully considers all of the above options, he would easily find that the first three are of horrible consequences. The first two are disastrous without doubt, while the third has been historically noted for producing children that usually have no one to sincerely take care of them. Therefore, they become an

unnecessary liability for the whole country. Hence, the only option left is polygamy.

☆ If a person's wife is medically unable to get pregnant and the husband wants to have children, there will be logically three options:

- i. Maneuvering to kill his wife to get another wife.
- ii Divorce his wife.
- iii Keeping her along with another one.

As we have discussed earlier, the first two are clearly not in the favor of society. Hence, the third option offers the best solution.

☆ Polygamy protects the interests of both the women and children. Those who are against polygamy want to avoid further responsibilities, as the legalized polygamy would require them to spend money on behalf of their additional wives and children. Monogamy allows them to enjoy extra-marital affairs without being burdened with financial responsibilities.

☆ Supporters of monogamy still do not actually avoid extra-marital relationships with other women. Therefore, they are actually unregistered polygamists too. Regarding the consequences of marriage, there is no difference between a polygamist and a monogamist having extra-marital relationships with other women.

☆ The concept of polygamy is not to be seen as an oppression of women. According to Islamic theology, a marriage cannot be performed without the clear consent of a woman. Therefore, if the second woman is prepared to be the second wife of a man, then who are we to object? Let her decide what she wishes for!

Regarding the importance of the consent a woman must give for marriage, one may refer to the true story of Umm-e-Abban, a widow during the reign of Shaikh Umar (May Allah be pleased with him). She was proposed to by Shaikh Umar, Shaikh Ali, Shaikh Zubair, and Shaikh Talha (May Allah be pleased with them). She accepted the proposal of Shaikh Talha, even though Shaikh Umar was head of the state. 1

☆ After all, it must be noted that Islam did not open the door of polygamy freely, but rather, it regulated it with a stern condition of "dealing with all wives justly" - which is not an easy task. That is why the percentage of Muslims who have more than one wife throughout the world is very small and a few only dare to have more than one wife.

JANNATI KAUN?

1. See, Mustadrak Haakim, Vol: 3, Page: 424

CHAPTER FOUR

FAMILY LIFE

JANNATI KAUN?

After discussing in detail about the marriage and its directly-related issues, it is the right time to discuss family issues that proceed marriage. As a matter of fact, one who is familiar with them should expect a prosperous, enjoyable, and comfortable life, as opposed to one who has no authentic information on the rights and responsibilities towards their family members.

Therefore, in this chapter, the rights of the husband, wife, and children will be mentioned briefly.

RIGHTS OF THE HUSBAND:

According to the concept of rights and responsibilities in a family based on Islamic theology, husbands are considered the heads of the households.

﴿الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ﴾ 1

[Men are the leaders on women.]

Therefore, the husband has more responsibilities than anyone else in the family. And logically, responsibilities are directly proportional to power. Hence, the husband has more power in the family than the others.

We will summarize the basic rights of a husband in the following points:

[i] Obedience to the Husband:

A wife is expected to be obedient to her husband as long as he does not ask her to do that which contradicts the fundamentals of Islam.

The Beloved Prophet (Peace be upon him) said:

﴿مَا اسْتَفَادَ الْمُؤْمِنُ بَعْدَ تَقْوَى اللَّهِ خَيْرًا لَهُ مِنْ رُوحَةٍ صَالِحَةٍ إِنْ أَمَرَهَا

أَطَاعَتْهُ.....﴾ 2

[After fearing Almighty Allah, a Muslim does not have any other blessings that are better than a pious wife who obeys him when he directs her.....]

While listing the good deeds of a wife, our Beloved Prophet (Peace be upon him) said:

﴿الْمَرْأَةُ إِذَا صَلَّتْ خَمْسَهَا وَصَامَتْ شَهْرَهَا وَأَحْصَتْ فَرْجَهَا وَأَطَاعَتْ بَعْلَهَا

فَلْتَدْخُلْ مِنْ أَيِّ أَبْوَابِ الْجَنَّةِ شَاءَتْ﴾ 3

[A woman who maintains the daily five times prayer, observes fasting during Ramadan, guards her decency, and obeys her husband should be allowed to enter into Paradise from any door she wishes.]

1. Holy Qur'an, Chapter: 4, Verse: 34

2. Ibn-e-Maja, Vol: 1, Page: 596

3. Mishkat, Vol: 2, Page: 237

This obedience, however, does not include something that would be interpreted as a clear disobedience towards Allah the Exalted. For the concept of obedience, there is a general basic rule explained by our Beloved Prophet (Peace be upon him) saying:

﴿ لَا طَاعَةَ فِي مَعْصِيَةِ اللَّهِ، إِنَّمَا الطَّاعَةُ فِي الْمَعْرُوفِ ﴾ 1

[(There is) no obedience in what is considered disobedient to Allah. Obedience is only in what is just.]

[ii] Marital Relations:

It is the primary obligation of the wife to respond whenever her husband calls her to come to bed for marital relations. Explaining this, our Beloved Prophet (Peace be upon him) said:

﴿ إِذَا الرَّجُلُ دَعَا زَوْجَتَهُ لِحَاجَتِهِ فَلْتَأْتِهِ وَإِنْ كَانَتْ عَلَى التَّنُورِ ﴾ 2

[Whenever a man calls his wife for his desire, she should come to him even if she is occupied at the oven.]

Therefore, a wife should mentally prepare herself to respond to her husband with full consent and joy. Because of the serious consequences for denying on the social life, the Noble Prophet (Peace be upon him) said:

﴿ إِذَا دَعَا الرَّجُلُ امْرَأَتَهُ إِلَى فِرَاشِهِ فَلَمْ تَأْتِهِ فَبَاتَ غَضْبَانَ عَلَيْهَا لَعَنَتُهَا الْمَلَائِكَةُ حَتَّى تُصْبِحَ ﴾ 3

[Whenever a man calls his wife to bed and she refuses so that he spends the night angrily, the angels curse her until morning.]

1. Muslim, Vol: 2, Page: 179

2. Tirmidhi, Vol: 4, Page: 255

3. Bukhari, Vol: 3, Page: 1181

[iii] Respect of the Husband:

A husband is expected to be respected by his wife - because naturally, one who is not respected could not be obeyed. Sayyeda Aisha narrated that the Prophet (Peace be upon him) said:

﴿لَوْ أَمَرْتُ أَحَدًا أَنْ يَسْجُدَ لِأَحَدٍ لَأَمَرْتُ الْمَرْأَةَ أَنْ تَسْجُدَ لِزَوْجِهَا....﴾ 1

[If I was to order someone to prostrate before anyone else, I would have ordered the wife to prostrate before her husband.]

[iv] Maintaining Dignity:

The wife is not supposed to allow anyone inside the house if she knows that her husband would not like the person to be in the house.

The Prophet (Peace be upon him) said:

﴿..... وَلَا يَأْذَنَنَّ فِي بُيُوتِكُمْ مَنْ تَكْرَهُوْنَ﴾ 2

[...And they must not allow those whom you do not like to be inside your houses.....]

Since a husband is the head of the household, his actions and powers are considered similar to the "head of the state" - who has right to bar anyone from entering into the state for the common benefit of the people.

[v] Permission of the Husband:

A wife must have the permission of her husband for leaving his house. However, if her parents are sick, then she does not have to obtain his consent.

1. Ibn-e-Maja, Vol: 1, Page: 595

2. Tirmizi, Vol: 4, Page: 256

This is based on the instructions of the Prophet (Peace be upon him) to a lady who asked about the rights of a husband on his wife. He said:

﴿ فَإِنَّ حَقَّ الرُّوْحِ عَلَى زَوْجَتِهِ أَلَّا تَخْرُجَ مِنْ بَيْتِهَا إِلَّا بِإِذْنِهِ، فَإِنْ فَعَلَتْ، لَعَنَتْهَا مَلَائِكَةُ السَّمَاءِ وَمَلَائِكَةُ الرَّحْمَةِ وَمَلَائِكَةُ الْغَضَبِ حَتَّى تَتُوبَ أَوْ تَرْجِعَ... ﴾ 1

[His right upon her is that she does not go out of her house without his permission. However, if she does go out, then the angels of heaven, the angels of blessings, and the angels of punishment all curse her till she asks for forgiveness or comes back.....]

To better understand the logic behind this, one should refer to the following verse of the Holy Qur'an:

﴿ وَقَرْنَ فِي بُيُوتِكُنَّ وَلَا تَبَرُّجْنَ تَبَرُّجَ الْجَاهِلِيَّةِ الْأُولَى... ﴾ 2

[And stay in your homes and do not display yourselves like those from the time of ignorance.....]

Being a wife who is responsible for maintaining the household, it is not appropriate for her to go out without the permission of her husband. However, this does not mean that a wife should be kept as a prisoner inside the home, but rather, that a husband should spare some time from his busy schedule to go out with his family and have some sort of fun.

As recorded, our Merciful Prophet (Peace and Blessings of Almighty Allah be upon him) went out with his wife Sayyeda Aisha (May Allah be pleased with her) and raced with her twice. Narrating this interesting and beautiful event, she said:

1. Majmauz Zawaid, Vol: 4, Page: 563

2. Holy Qur'an, Chapter: 33, Verse: 33

﴿ سَابَقَنِي النَّبِيُّ فَسَبَقْتُهُ، فَلَبِثْنَا حَتَّى إِذَا أَرَهَقَنِي اللَّحْمُ، سَابَقَنِي فَسَبَقَنِي، فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: هَذِهِ بِتِلْكَ 1 ﴾

[The Prophet of Almighty Allah (Peace be upon him) raced with me and I beat him. After a while, when I became a little heavier, he raced me again and beat me and said: This is for the past one.]

Therefore, having some sort of fun with her is the prophetic way. However, when going out, she must dress properly and modestly, according to the Islamic etiquettes and moral values.

[vi] Sharing the Housework:

A good wife is one who helps in maintaining the daily business of the home. Distributing the responsibilities of the life amongst the people of every category in a justly manner, our Beloved Prophet (Peace be upon him) said:

﴿ كُلُّكُمْ رَاعٍ وَكُلُّكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ وَالْأَمِيرُ رَاعٍ وَ مَسْئُولٌ وَالرَّجُلُ رَاعٍ عَلَى أَهْلِ بَيْتِهِ وَالْمَرْأَةُ رَاعِيَةٌ عَلَى بَيْتِ رَوْحِهَا وَوَلَدِهِ... 2 ﴾

[Every one of you is in charge and you all will be asked about your responsibilities. The head of the state is in charge and responsible, the man is in charge of his family members, and the woman is in charge of the house of her husband and his children.....]

As the one in charge of the house, she is expected to spend her time maintaining it moderately based on the primary income of her husband.

1. Sahih Ibn-e-Habban: Vol 5, Page: 69

2. Bukhari, Book of Marriage, No: 5200

The Prophet of Almighty Allah (Peace and Blessings be upon him) said:

﴿ إِذَا أَنْفَقَتِ الْمَرْأَةُ مِنْ طَعَامِ بَيْتِهَا غَيْرَ مُفْسِدَةٍ كَانَ لَهَا أَجْرُهَا بِمَا أَنْفَقَتْ وَلِرِزْقِهَا أَجْرُهُ بِمَا كَسَبَ وَلِلْخَازِنِ مِثْلُ ذَلِكَ، لَا يَنْقُصُ بَعْضُهُمْ أَجْرَ بَعْضٍ شَيْئًا 1 ﴾

[When a woman spends on usual expenses of her house moderately without unnecessary expense, she gets the reward for her moderate expenses, the husband gets the reward for his work, and the keeper of money gets the same without having any cut in the reward due to each other.]

RIGHTS OF A WIFE:

The wife is considered as the second wheel of a two-wheeled vehicle of the house. Therefore, to have a pleasant environment inside the house, the rights of a wife must be taken care of.

Allah the Exalted says:

﴿ وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً ۚ إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ 2 ﴾

[And among His signs is that He created for you life-mates from among yourselves, so that you may feel tranquility with them, and He has put love and mercy between you. Surely, in that are signs for those who reflect.]

With the sub-headings in the following pages, we will try to study the rights of a wife.

1. Bukhari, Vol:2, Page: 517

2. Holy Qur'an, Chapter: 30, Verse: 21

[i] Dowry (مهر):

The payment of the Dowry to the wife is an obligation upon the husband, and she has the right to demand it according to the agreement.

Allah the Exalted says:

﴿ وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً ۚ ﴾ 1

[And hand over to women their dowries with a good heart.]

However, it is allowed for a wife to reduce a portion of it or even forgive the entire dowry explicitly on her own decision - without any coercion or outside pressure.

Allah the Exalted says:

﴿ وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا تَرَا ضِئْتُمْ بِهِ مِنْ بَعْدِ الْفَرِضَةِ ط إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا ۚ ﴾ 2

[There is no sin if you agree mutually to make any changes to it. Indeed Allah is All-Knowing, All-Wise.]

[ii] Support:

Sufficiently taking care of the wife is a primary obligation upon the husband. It includes clothing, shelter, and basic sustenance around the year.

Allah, the Exalted says:

﴿ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۚ ﴾ 3

[And upon the father is the mother's sustenance and her clothing reasonably.]

1. Holy Qur'an, Chapter: 4, Verse: 4

2. Holy Qur'an, Chapter: 4, Verse: 24

3. Holy Qur'an, Chapter: 2, Verse: 233

Explaining the rights of a wife, our Beloved Prophet (Peace be upon him) said:

﴿..... أَنْ يُطْعِمَهَا إِذَا طَعِمَ وَأَنْ يَكْسُوَهَا إِذَا اكْتَسَى وَلَا يَضْرِبَ الْوَجْهَ وَلَا يَقْبَحَ وَلَا يَهْجُرَ إِلَّا فِي الْبَيْتِ﴾ 1

[....that he must feed her whenever he eats, clothe her whenever he clothes himself, not to hit her face, not to curse her, and no to boycott her except within the house.]

Supporting his wife is important for the husband, as she is even allowed to secretly take from his property if he falls below this level of providing basic facilities to her.

A lady whose husband was too stingy to provide for her basic needs asked the Prophet (Peace be upon him) if she could take from his property without his knowledge:

﴿ قَالَ: لَا إِلَّا بِالْمَعْرُوفِ﴾ 2

[The Prophet of Almighty Allah (Peace be upon him) said: No, but take reasonably.]

Furthermore, spending money on one's own family including the wife earns the husband more reward than spending it in any other way.

The Beloved Prophet (Peace be upon him) said:

﴿ دِينَارٌ أَنْفَقْتَهُ فِي سَبِيلِ اللَّهِ، وَدِينَارٌ أَنْفَقْتَهُ فِي رَقَبَةٍ، وَدِينَارٌ تَصَدَّقْتَ بِهِ عَلَى مُسْكِينٍ، وَدِينَارٌ أَنْفَقْتَهُ عَلَى أَهْلِكَ، أَعْظَمُهَا أَجْرًا الَّذِي أَنْفَقْتَهُ عَلَى أَهْلِكَ﴾ 3

[A deenar which was spent in the way of Allah; a deenar which was used in the freeing of a slave; a deenar which was used to support a poor person;

1. Ibn-e-Maja, Vol: 1, Page: 593

2. Muslim, Vol:12, Page: 9

3. Same Reference, Vol: 7, Page: 70

a deenar which was spent on the family: Amongst all of them, the one which was used to support the family has greater reward than the others.]

[iii] Nice Treatment:

Along with properly taking care of her, the husband is also liable to treat her in a beautiful manner to the best of his ability. Allah the Exalted says:

﴿ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ ۝ ١ ﴾

[And consort your wives in a nice manner.]

Our Beloved and Merciful Prophet (Peace be upon him) said, very beautifully:

﴿ خَيْرُكُمْ خَيْرُكُمْ لِأَهْلِهِ وَأَنَا خَيْرُكُمْ لِأَهْلِي ۝ ٢ ﴾

[The best of you is the one who is best for his wife, and I am the best for my wife.]

Indeed, our Beloved Prophet (Peace be upon him) was the best for his wives and his way of dealing with them is the best - which we should follow. He used to welcome his wives with a smile and in a beautiful fashion, talking softly and even having fun. He occasionally had dinners with them. Every single day, it was his routine to visit and have a short talk with each one of them.

[iv] Physical Relationship:

Neglecting a natural physical relationship with the wife and getting involved in other religious or worldly activities is not a legal excuse in our religion.

1. Holy Qur'an, Chapter: 4, Verse: 19

2. Tirmidhi, Vol: 10, Page: 299

Once, the wife of Shaikh Usman bin Mazon came to the Prophet (Peace be upon him) and informed him about the usual activities of her husband: he fasts during the days and prays during the nights. Our Beloved summoned him and said to him, Am I not the best example for you to follow? He answered, yes. Then the Prophet (Peace be upon him) said:

﴿.....أَمَّا أَنْتَ فَتَقُومُ اللَّيْلَ وَتَصُومُ النَّهَارَ، وَإِنَّ لَأَهْلِكَ عَلَيْكَ حَقًّا، وَإِنَّ

لِجَسَدِكَ عَلَيْكَ حَقًّا، وَصَلِّ وَنَمْ، وَصُمْ وَأَفِطِرْ.....﴾ 1

[..... but you pray during the nights observe fasting during the days. Certainly, your wife has a right upon you and your body has a right upon you too. Therefore, pray and sleep, fast and enjoy foods.]

JANNATI KAUN?

[v] Justice:

One who has more than one wife at the same time must maintain justice between them physically. It includes providing them with the same foods, clothing, housing, as well as equal time in the nights.

Warning those who fail to do justice amongst their wives, our Beloved Prophet (Peace be upon him) said:

﴿مَنْ كَانَتْ لَهُ امْرَأَتَانِ يَمِيلُ إِلَى إِحْدَهُمَا عَلَى الْأُخْرَى، جَاءَ يَوْمَ الْقِيَامَةِ

وَأَحَدُ شِقَيْهِ سَاقِطٌ﴾ 2

[Whoever has two wives and favors one of them will be resurrected on the Day of Judgment with one of his sides hanging down.]

1. Sahih Ibn-e-Habban, Vol: 1, Page: 192

2. Ibn-e-Maja, Vol: 1, Page: 633

[vi] Privacy:

Both spouses are not allowed to disclose their secret matters to others. Regarding this important issue, our Prophet (Peace be upon him) said:

﴿ إِنَّ مِنْ أَشَرِّ النَّاسِ عِنْدَ اللَّهِ مَنْزِلَةً يَوْمَ الْقِيَامَةِ ، الرَّجُلَ يُفْضِي إِلَى امْرَأَتِهِ ، وَتُفْضِي إِلَيْهِ ، ثُمَّ يَنْشُرُهَا ﴾ 1

[Indeed, the worst person amongst all people on the Day of Judgment will be one who discloses his wife and as she discloses to him, and then goes out and spreads her secrets.]



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SECTION OF

DIVORCE

وَعَايِرُوهُنَّ بِالْمَعْرُوفِ، فَإِنْ كَرِهْتُمُوهُنَّ، فَعَسَىٰ أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا
(القرآن الكريم)

And consort with wives in a **nice** manner. If you dislike them, it may be that you dislike a thing that Allah brings through it a great deal of good.

JANNATI KAUN?

أَنْفَعُ الْعَمَلِ إِلَى اللَّهِ عَزَّ وَجَلَّ: الطَّلَاقُ

(الحديث الشريف)

The worst permissible action before Allah the Exalted is a divorce.

CHAPTER FIVE



DIVORCE IN ISLAM

Before going into the related matters of Divorce, it is better to have a brief introductory discussion on its definition and logical aspects of its legalization in a simplified way of expression.

WHAT IS DIVORCE?

Through the "marriage," a couple becomes united physically; however, with the practice of "divorce," both are separated from each other and once again hold the status they had prior to marriage.

Because the interpretation of "divorce" is separation, Allah the Exalted does not like for it to be practiced, even though it is permissible.

Our Beloved Prophet (Peace be upon him) said:

﴿ أَبْغَضُ الْحَالِلِ إِلَى اللَّهِ عَزَّ وَجَلَّ: الطَّلَاقُ ﴾ 1

[The worst permissible action before Allah the Exalted is a divorce.]

PHILOSOPHY OF DIVORCE:

In some other religions such as Hinduism, there was no concept of divorce. According to their religious book, a married woman has no way out from the marriage contract at any cost or in any circumstances. Therefore, the marriage for a woman was considered forever, whether the relationship between the couple went smoothly or had bitter confrontations occasionally. Hence, with the death of the husband, their religious custom encourages the wife to be burned alive with her husband's cremation. This system still exists and is known as the Sati System in their traditions. 2

On the other hand, in Western culture, the divorce is proved to be one of the most frequently used solutions for family disputes throughout society. According to their religious guidance, there is no specific rule to be followed regarding the practice of divorce. Hence, in the case of minor arguments or habitual differences between them, a couple hurriedly jumps into the process of separation. That is why the divorce rate in Western societies and American culture is expectedly very high and is rapidly increasing day by day.

1. Abu Dawood, Vol:6, Page: 227

2. See, Manu Smirti and other religious books on Hinduism.

However, it is needless to say that both of the above phenomenon regarding the solution of family problems are proven to be unsuitable for the benefit of the society. Not having the concept of divorce at all has horrible consequences, just like fully allowing the divorce without legalization, as it systematically adds only more complications to the existing problems. At this point, the Islamic system of divorce triumphantly comes out to be the best solution for family disputes. The Islamic theology neither closes the door to divorce nor fully opens it completely without having any rule.

Islam's positive approach to this issue lies on the following systematic steps:

[i] Basically, no one is perfect. Everybody has one or more flaws. Sometimes, one is very good at one field but fails to deal with other matters.

Disclosing the secret to a happy life, the Holy Qur'an reminds us beautifully:

﴿ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ، فَإِنْ كَرِهْتُمُوهُنَّ، فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَ
يَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا ﴾ 1

[And consort with wives in a nice manner. If you dislike them, it may be that you dislike a thing that Allah brings through it a great deal of good.]

Making it more clear in a very practical manner, our Beloved Merciful Prophet of Almighty Allah (Peace and Blessings be upon him) said:

﴿ لَا يَفْرَكُ مُؤْمِنٌ مُؤْمِنَةً، إِنْ كَرِهَ مِنْهَا خُلُقًا، رَضِيَ مِنْهَا آخَرَ ﴾ 2

1. Holy Qur'an, Chapter: 4, Verse: 19

2. Muslim, Vol: 10, Page: 50

[As a Muslim, one should not hate his wife. He may find in her something that he does not like, however, he will find something else in her that will please him.]

Therefore, primarily both the husband and the wife are expected to hide the shortcomings of each other and promote the tradition of forgiveness frequently.

Appreciating the noble qualities of Muslims, our Lord the Exalted says:

﴿ الَّذِينَ يُنْفِقُونَ فِي السَّرَّاءِ وَالضَّرَّاءِ وَالْكُظُمِينَ الْغَيْظَ وَالْعَافِينَ عَنِ النَّاسِ وَاللَّهُ يُحِبُّ الْمُحْسِنِينَ ﴾ 1

[For those who spend - whether in prosperity or in a hard time - who restrain anger, and pardon people, Allah loves those who do good.]

JANNATI KAUN?

[ii] For the second step, each one is advised to choose a separate, trusted arbiter and have the two arbiters meet together. It is then the responsibility of the arbiters to have a better understanding of the issue. Then, they try to resolve it as amicably as possible to provide the man and woman with a chance to restart their life with love, respect, and dignity.

Allah the Exalted says:

﴿ وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا، إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا ﴾ 2

[If you fear having breaches between them, appoint two arbiters, one from his family and the other from hers.

1. Holy Qur'an, Chapter: 3, Verse: 134

2. Holy Qur'an, Chapter: 4, Verse: 35

If they wish for peace, Allah will cause their reconciliation, for Allah has full knowledge and is acquainted with all things.]

[iii] Now at last, one may enter into the process of giving the divorce by following the systematic stages set by our religious authorities.

If Allah the Exalted wills, we will discuss the best way of giving the divorce in the following chapter of this book.

LEGALIZATION OF DIVORCE:

Although during the discussion about the philosophy of divorce I only touched upon the legalization of it indirectly, it is still necessary to have a clear picture of the issue under the shade of authentic Islamic resources and its legal prospect.

Providing the basic platform for the legalization of divorce, the Holy Qur'an says clearly:

﴿الطَّلَاقُ مَرَّتَانٍ، فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ﴾ 1

[Divorce is up to twice; thereafter, a woman must either be kept in honor or allowed to go with kindness.]

Divorce is permissible to act as a remedy for a family problem that may not be solved otherwise. Therefore, our Beloved Prophet (Peace be upon him) reiterated its legal status and said:

﴿أَبْغَضُ الْحَلَالِ إِلَى اللَّهِ عَزَّ وَجَلَّ: الطَّلَاقُ﴾ 2

[The worst permissible action before Allah the Exalted is divorce.]

1. Holy Qur'an, Chapter: 2, Verse: 229

2. Abu Dawood, Vol: 6, Page:227

CHAPTER SIX

THE WAY OF DIVORCE

JANNATI KAUN?

In the previous chapter, a brief introduction of the divorce was described in an attempt to clarify the central topic of discussion and make it easy to understand for readers. Next, we are going to address the topic in depth and discuss the whole process of divorce systematically, with a few sub-topics.

CONDITIONS OF DIVORCE:

For a legitimate divorce, there are specific conditions. Without these conditions, a divorce is not regarded as valid. These conditions are:

- [i] The husband must be an adult.

Therefore, a divorce by a non-adult husband is not considered valid.

This notion is based on the following Hadith, as our Beloved Prophet (Peace be upon him) said:

﴿رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ : عَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ﴾ 1

[Actions of three are not valid; action of a child till he reaches puberty...]

[ii] The husband must be sane.

Along with the above primary condition, a husband must be mentally stable medically when divorcing his wife.

Our Beloved Merciful Prophet (Peace and Blessings be upon him) said:

﴿كُلُّ طَلَاقٍ جَائِزٌ إِلَّا طَلَاqُ الصَّبِيِّ وَالْمَجْنُونِ﴾ 2

[Every divorce is valid except the divorce given by a child or a possessed one.]

Likewise if a fainted person, while he is extremely out of control, gives divorce to his wife, it would not be considered valid.

Our Beloved Prophet of Almighty Allah (Peace and Blessings be upon him) said:

﴿ لَا طَلَاقَ فِي إِغْلَاقٍ ﴾ 3

[Divorce is not valid during an extremely unconscious condition.]

Furthermore, if a person who loses his consciousness due to extreme rage - though it is quite rare - gives divorce to his wife, it would not be regarded as legally valid either.

1. Musnad Ahmed, Vol:7, Page: 147

2. Musnad Abu Hanifa, Vol:1, Page: 250

3. Abu Dawood, Vol: 6, Page: 261

However, it is recommended from Muslim scholars to investigate deeply into the cases of divorces made through rage as Muslim husbands frequently try to hide their divorce due to wrath in order to have a clean account with religious authorities.

However, one who pronounces the specific words designed for divorce just for fun would make it legal, as the Prophet of Allah clearly stated:

﴿ ثَلَاثٌ جِدُّهُنَّ جِدٌّ وَهَزْلُهُنَّ جِدٌّ: النِّكَاحُ، وَالطَّلَاقُ وَالرَّجْعَةُ ﴾¹

[Three actions are always considered valid, whether done seriously or out of fun: marriage, divorce, and retreating from a divorce.]

Along with this, on the basis of some Hadith, scholars of the Hanafi School of Islamic Jurisprudence have validated the divorce of a person who is persuaded and forced by an outsider to announce it.

[iii] The purpose must be divorce.

While uttering the words of divorce in any language, one must have the clear goal of divorcing his wife though he does not intend for it.

Therefore, if a judge pronounces the words of divorce during the process of judgment or someone mentions it while narrating the story repeatedly, then these words would have no effect physically - as they do not have the purpose of divorcing their wives, even though they may have pronounced the words of divorce clearly. ²

1. Ibn-e-Maja, Vol;1, Page: 657

2. See, Fathul Qadeer, Chapter of divorce

[iv] There must be a specific indication.

While divorcing, one must specifically point out his intention of divorce towards his wife, either by mentioning her name or stating with a clear indication towards her. For example, one could say, "I divorce Khadija" or "I divorce you" etc.

However, if he uses a word that does not refer to her entire personality, then the divorce would not be considered valid. For example, one cannot say, "I divorce your hand" or refer to the nose or finger, etc. 1

[v] The marriage contract must be valid.

Physically, there must be a valid marriage contract between them prior to any attempt of divorce.

Showing this guideline, our Beloved Prophet (Peace and Blessings be upon him) said:

﴿ لَا طَّلَاقَ قَبْلَ النِّكَاحِ وَلَا عِتْقَ قَبْلَ مِلْكٍ ﴾ 2

[No divorce before marriage and no freeing before having a slave.]

TYPES OF DIVORCE:

Based on different perspectives, "divorce" can be categorized into various types. In order to better understand the topic, it is important to know the basic information of each type. In the following pages, we will refer to them briefly.

1. See, Bahar-e-Shariat, Vol: 8, Page: 13

2. Nailul Awtar, Vol: 7, Page: 26

[A] Based on the Impact of the Divorce:

Divorce is meant for a husband and wife to separate from each other. Therefore, a divorce is a divorce, regardless of its type, because of its main purpose of separation. However, from the perspective of its impact on the chances of re-uniting, the divorce is categorized into three different types.

[i] Retreatable Divorce (رجعى)

In this type, a husband is allowed to retreat from the divorce aimed at his wife, even without the formal consent of her during the her Iddah (عدة), a specific time frame that will be discussed in the next chapter.

There is no specific, legal way of reunification. However, this may be done verbally or through physical action that is usually sought between a husband and a wife. However, if the prescribed Iddah has passed and the husband has not attempted to retreat from the divorce, then to reunite, he would have no option but to remarry her once again following the same process of marriage for a new couple.

[ii] Separable Divorce (بائن)

In this type of divorce, a husband is not allowed to retreat from his divorce. However, reunification can be done only through repeating the usual process of marriage.

The basic difference between Retreatable divorce and Separable divorce is the method of reunification. In the first it is possible to without having a proper marriage

and the consent of the wife, but in the second category, a proper marriage with the consent of the wife and a new Dowry are the primary requisites for reunification of the old couple.

[iii] Strongest Divorce (مغالطة)

This is the worst way of divorce. After the practice of this divorce, one is not even allowed to remarry with his divorced wife until she is bound to someone else and divorces him. Prior to both of the marriages, with someone else and with her ex-husband, the divorced wife must complete her Iddah according to the guidelines set up by Islamic theology with reference to different personal circumstances. ¹

If Allah the Exalted wills, we will discuss these types of divorces and their direct effects on reunification in a separate chapter specially designed for it.

[B] Based on the Ways of Divorce:

Though the practice of divorce is not an appreciate action in Islam, it is an option put in place to allow relief from personal chaos and differences that may be more harmful for a couple than staying together under the same roof. Therefore, our religion has set up a better way for the practice of divorce.

According to authentic Islamic theology, there are logically three types of divorce based on the ways of its practice.

1. See, Alfiquhul Islami, Vol: 7, Page: 432

[i] The Best Way (احسن)

According to Hanafi School of Jurisprudence, the best way of giving a divorce is by practicing only one divorce when the wife is in the state of purification and her husband has not had sexual intercourse with her at all ever since she finished her regular menstrual period.

Allah the Exalted says:

﴿ يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ ﴾ 1

[O Beloved Prophet! When you people want to divorce your wives, then divorce them during their Iddah.....]

The word "Iddah" in the above verse was explained by Shaikh Abdullah ibn Abbas, Shaikh Ibn-e-Masood, and Shaikh Ibn-e-Umar (May Allah be pleased with them, as the state of purification. Therefore, practicing the right of divorce while they are in the state of purification when their husbands have not had sexual intercourse since their purifications is the best way. Disclosing the logic behind this way, scholars have concluded their researches that in the adoption of this method, they will have the least hardships in getting out of the marriage. 2

In addition to the above supporting evidence from the Holy Quran, there are some clear statements by the Beloved Prophet (Peace be upon him) too.

For example, one son of Shaikh Umar Farooque (May Allah be pleased with them both) divorced his wife while she was passing through her menstrual period.

1. Holy Qur'an. Chapter: 65, Verse: 1

2. See, Ahkamul Quran Vol: 30, Page: 563

See, Hidayah, Chapter: Talaq

Upon hearing this matter, our Beloved Prophet (Peace and Blessings be upon him) said:

﴿ مَا هَكَذَا أَمَرَكَ اللَّهُ يَا بَنَ عُمَرَ ﴾ 1

[This is not what Almighty Allah has commanded you, O Son of Umar.]

Furthermore, what was recorded in another narration of Hadith provides a strong base for the best way of giving a divorce. The Beloved Prophet (Peace be upon him) said to Shaikh Umar (May Allah be pleased with him):

﴿ مَرَّةً فَلْيُرَاجِعْهَا، ثُمَّ لِيُمْسِكْهَا حَتَّى تَطْهَرُ، ثُمَّ تَحِيضُ فَتَطْهَرُ، ثُمَّ إِنْ شَاءَ

طَلَّقَهَا طَاهِرًا قَبْلَ أَنْ يُمْسَ ﴾ 2

[Ask him to retreat from the divorce, then keep her till she comes out of her period, then let her go to her period till she comes out of it. Then, if he wills, he may divorce her before having any sexual advancement with her at all.]

In this way of divorce, upon completion of the Iddah, she will be released from the marriage contract automatically.

[ii] The Moderate Way (حسن)

The moderate way of practicing the right of divorce is to give a divorce when the wife is in the state of purification and the husband has not had sexual intercourse with her since she came out of her regular period, then to give a second divorce once she completes her period without having sexual intercourse with her in it, then to give a third divorce in the same way.

1. Sunan Baihiqui, Vol: 11, Page: 210

2. Abu Dawood, Vol: 6, Page: 230

Upon completion of the third menstrual period, she would be out of the marriage contract and regarded as one who is divorced in the Strongest Way (مغلظة).

This type of divorce is a natural outcome of the same Hadith mentioned earlier.

[iii] Innovative Way (بدعى)

This is the wrong way of practicing the permissible right of divorce. This innovative way is usually sought with three options:

- a. Giving three divorces or two, or repeating a divorce thrice or twice in one sitting or all at once.
- b. Giving a divorce during the menstrual period of the wife, though it is incumbent upon the husband to retreat from it. However, this divorce would be recorded anyway.
- c. Giving a divorce during the purified state of wife in which he has had sexual intercourse with her. 1

[C] Based on the Words of Divorce:

This is a very sensitive classification of divorce, having far-reaching effects on the relationship between couples. According to the scholars, it is of two kinds:

[i] Clear Words (صریح)

"Clear words" mean that the words have "divorce" as their obvious and basic meaning and are being commonly used for that purpose in the community at large. 2

1. See, Durr-e-Mukhtar, Vol:3 , Page: 249

2. See, Tuhfatul Fuqaha, Chapter: Divorce

For example, the words "Talaq" and "Divorce" clearly mean "separation."

Along with these words, every word that is popularly known to mean separation, regardless of its language and origin, would be listed under the category of "clear words" of divorce.

Also, the wrong pronunciations of these words will make no difference in their effects and are still regarded as "clear words" of divorce. It is because, those who pronounce them have obvious intentions of divorce, therefore, incorrect pronunciations of these words will does not make any difference.



Its Effect:

Pronouncing a "clear word" once only while following the conditions that were discussed earlier will make the wife divorced with a "Retreatable Divorce" (رجعى) regardless of whether the intention of the husband was for any of the other types of divorce or just for fun.

As for example, the phrases "you are divorced" or "I am divorcing you" or "I give you divorce" etc. With these clear words, a wife would be divorced and entitled to have been "retreatably divorced." 1

[ii] Indicative Word (كنائية)

It is a word that is not used for divorce exclusively, but rather, it has other meanings too - along with the meaning of divorce. Some examples are, "leave from my home," "get out," etc.

1. See, Darrul Mukhtar, Vol: 3, Page: 272

Its Effect:

Mere pronounciation of an "Indicative word" will have no effect on the relationship of a couple until it has one of the following:

- a. Having the intention of divorce, or
- b. Having physical circumstances which specify its exclusive meaning of divorce; i.e. the husband pronouncing these words while the couple were having a conversation about divorce, or
- c. Having a physical appearance of the husband's madness or wrath.

Fulfilling one of the above three conditions, an "Indicative word" causes the wife to be divorced with a "single separable divorce" (بائن) even if the husband had the intention of giving it twice. However, if during the pronouncement of these words, one has the intention of giving her a divorce thrice (مفظة), then this would be considered valid. 1

Some Usual Indicative Words:

In an attempt to clarify this topic, some commonly used "Indicative words" will be mentioned here. It should be kept in mind that different languages have, naturally, different ways of expressing an indication to divorce someone. Therefore, one may add more to the list of "Indicative words" based on his culture and traditions. Here, we mention some of these words to have a general idea of numerating other words under this category.

1. See, Durr-e-Mukhtar, Vol: 3, Page: 325

These are as follows:

"Take your way out," "Get out," "Get away," "Go wherever you wish," "You are forbidden for me," "I am forbidden for you," "You are not for me anymore," "I have freed you," "Find another husband," "I am separated from you," "You are free," "Don't show me your face," "Go marry whom you wish," "You are not for me till the Day of Judgment," "I have cancelled the marriage," "I have nothing to do with you," "You are for me like any other forbidden thing," etc.

[D] Based on Appearance

This refers to the way of communication between concerned individuals regarding the practice of divorce.

Based on this category, there are a few types of divorce.

[i] By Word (بـالـالـفـاظ)

The right of divorce can be practiced by word, as we have discussed during the explanations of the different types of divorce. No further talk on this specific issue seems to be necessary.

[ii] By Writing (بـالـكـتـاب)

If the word of divorce is written on something that is indistinguishable like on water or air, then it will have no impact on the marital relationship.

However, if it is written on paper, wood, or something that is clearly distinguishable, then it is considered valid. Therefore, if the writing is in the regular format of a letter that addresses the wife clearly, then this would cause her

to be divorced. For the validity of divorce in writing, the husband's acceptance of its contents is a must, or in the case of denial by the husband, the wife must provide reliable witnesses for its authenticity. Merely recognizing the writing style of the husband does not make any difference. 1

[iii] By Signals (بالإشارة)

The right of divorce may be practiced by signals for a person that is speechless from birth or speechless due to any medical problems. The strict condition of his signals is that they must have well-known explanations amongst the people around him. In contrast, if people are not familiar with the meaning of his signals, then these will have no effect. 2

[iv] By Emissary (بالرسالة)

If while the wife of a person is not present, her husband passes his intention of divorce through an emissary, then the divorce would be regarded as valid. As per the directions of the husband, this divorce would be applied legally. 3

[v] By Numbers (بالعدد)

Promoting justice, humanity and mutual respect, as our religion has corrected several inhuman cultures and traditions that have been commonly practiced by

1. See, Bahar-e-Shariat, Vol: 8, Page: 10

2. See, Jauhara Nayyara, Chapter: Divorce

3. See, Badae, Vol: 3, Page: 183

non-believers, Islam guides us towards the righteous and most preferred ways regarding marriage and divorce. In the Arab culture before the beginning of the Islamic movement, people had no limitations on the number of divorces. A person could give a divorce as many times as he wished and could retreat every time. Thus, there was no way out for the wife, neither she could have enjoyable life with her husband.

Such an event has been recorded by Sayyeda Aisha (May Allah be pleased with her) as she said:

﴿ كَانَ الرَّجُلُ يُطَلِّقُ امْرَأَتَهُ مَا شَاءَ أَنْ يُطَلِّقَهَا، وَإِنْ طَلَّقَهَا مِائَةً أَوْ أَكْثَرَ إِذَا ارْتَجَعَهَا قَبْلَ أَنْ تَنْقَضِيَ عِدَّتُهَا حَتَّى قَالَ الرَّجُلُ لِمَرْأَتِهِ: وَاللَّهِ لَا أُطَلِّقُكَ فَتَبَيَّنِي مِنِّي وَلَا آوِيكَ إِلَيَّ، قَالَتْ: وَكَيْفَ ذَلِكَ؟ قَالَ: أُطَلِّقُكَ وَكُلَّمَا قَارَبْتُ عِدَّتِكَ أَنْ تَنْقَضِيَ ارْتَجَعْتُكَ ثُمَّ أُطَلِّقُكَ وَأَفْعَلُ ذَلِكَ 1

[A person used to be able to divorce his wife as many times as he wished, even if it was a hundred times or more, and he could retreat every time before her Iddah was completed. It was this way until a person said to his wife: By Allah, I will neither divorce you to release you from the marriage contract, nor will I even out my relationship with you. She asked: How? He replied: I will divorce you and before you complete your Iddah, I will retreat you. Then I will divorce you again and so on]

Upon hearing this oppressed custom, our Beloved Prophet of Almighty Allah (Peace and Blessings be upon him) did not comment till Almighty Allah revealed the following valuable verse:

﴿الطَّلَاقُ مَرَّتَانِ، فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ﴾ 1

[Divorce is up to two times, then either retreat or sever with goodness.]

Based on these facts, scholars have limited the number of divorces to three. After giving two retreatable (رجعى) or separable (بائن) divorces, a husband has only one more chance. These three divorces may be practiced separately or all at once, though one should opt the best way of giving a divorce which was discussed earlier.

Since, giving three divorces in one sitting has been an issue of discussions amongst the scholars, therefore, we will touch this important matter and find out its direct effects on the mutual relationship of a couple.

Three Divorces in One Sitting:

Although a husband is extremely discouraged to practice giving three divorces to his wife in one sitting at once, these would be regarded as valid according to all four schools of Islamic Jurisprudence and authentic Islamic scholars.

There are several supporting evidences on this widely-accepted notion. However, considering the short format of this book, only a few will be brought into light.

After mentioning two divorces, Allah the Exalted says:

﴿فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ﴾ 2

[Then, if he divorces his wife, he cannot remarry her until she has married another person, and he has divorced her.]

1. Holy Qur'an, Chapter: 2, Verse: 229

2. Holy Qur'an, Chapter: 2, Verse: 230

In the above verses, the Holy Quran does not differentiate between giving all three divorces at once or separately. Hence, we are not allowed to add any new conditions on either side of the issue.

Also, our Beloved Prophet (Peace be upon him) validated giving three divorces at once. Shaikh Sahl bin Sad (May Allah be pleased with him) divorced his wife thrice after investigating a shameful act done by her.

﴿..... فَطَلَّقَهَا ثَلَاثًا..... فَفَارَقَهَا عِنْدَ النَّبِيِّ صَلَّى اللَّهُ عَلَى وَسَلَّمَ،

فَقَالَ: ذَاكَ تَفْرِيقٌ﴾ 1

[.....Then he divorced her thrice...and separated himself away from her in the presence of the Prophet (Peace be upon him). Then the Prophet (Peace be upon him) said: Yes, it is a separation...]

In another Hadith, our Beloved Prophet of Almighty Allah (Peace be upon him) showed his anger towards a person who gave his wife three divorces at once, but did not express his disapproval.

﴿أَخْبَرَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ رَجُلٍ طَلَّقَ امْرَأَتَهُ ثَلَاثَ تَطْلِيقَاتٍ

جَعِيْعًا فَقَامَ غَضْبَانَ ثُمَّ قَالَ: أَيْلَعَبُ بِكِتَابِ اللَّهِ وَأَنَا بَيْنَ أَظْهَرِكُمْ﴾ 2

[The Prophet of Allah (Peace be upon him) was informed about a person who gave three divorces at once to his wife. Upon hearing this, he stood up showing his extreme anger and said: The Book of Allah is being targetted for fun, while I am amongst you all...]

This Hadith also indicates that practicing three divorces at once is not appreciated, but regarded valid.

1. Sunan Baihiqui, Vol: 11, Page: 341

2. Nesai, Vol:6, Page: 453

[vi] By Imposing Condition (بالتعليق)

If a divorce is due to a specific condition, then if the condition applies, the divorce would be regarded as active.

This notion is also based on the general description of divorce in the Holy Quran, with no specific guidelines to be followed. Therefore, the basic norm of the verse of the Holy Quran primarily includes both based-on-condition and unconditional divorces.

A popular Hadith also constitutes legality of this type of divorce, as the Beloved Prophet (Peace be upon him) said:

﴿ الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ ﴾ 1

[Muslims are bonded with their conditions.]

Several companions, companions of companions, and scholars throughout Islamic history have validated conditional divorces upon their fulfillment. For example, Shaikh Ibn-e-Umar (May Allah be pleased with them both) regarded it valid.

﴿ طَلَّقَ رَجُلٌ امْرَأَتَهُ الْبَتَّةَ إِنْ خَرَجَتْ، فَقَالَ ابْنُ عُمَرَ: إِنْ خَرَجَتْ فَقَدْ بَتَّتْ

مِنْهُ، وَإِنْ لَمْ تَخْرُجْ فَلَيْسَ بِشَيْءٍ ﴾ 2

[A person based his divorce on the condition of "if she gets out." Shaikh Ibn-e-Umar (May Allah be pleased with them) said: Yes, she will be separated if she leaves, and if she does not leave, then it will have no effect.]

In the same way, Shaikh Abdullah bin Masood (May Allah be pleased with them) decided in the matter of a person who based his divorce on a condition. 3

1. Bukhari, Vol: 2, Page: 794

2. Same Reference, Chapter of Talaq, No: 11, Awqaf Egypt

3. See, Sunan Baihiqi, Vol: 11, Page: 261

Pre-Requisites of a Conditional Divorce:

Primarily, there are two pre-requisites for a condition divorce to be legally validated.

a. The condition must not presently be in action or impossible to fulfill. For example, saying, "If the sky is on us, then you are divorced" is not regarded as a condition divorce because the sky is already presently on top. Another example is to say, "If you pass through the hole of a sewing needle, then you are divorced" - this would be regarded as null because the condition is seemingly impossible. 1

b. The lady must physically be under the marriage contract or be passing through her Iddah or one must have a clear indication of marriage with another; i.e. "If I marry that lady, she would be divorced." However, one might say to a lady, "If you go there, you will be divorced." If he later marries her, then even if she goes to that place, she will not be regarded as divorced. 2

1. See, Bahar-e-Shariat, Vol: 8, Page: 41

2. See, Fiqhul Islami, Vol: 7, Page: 446

CHAPTER SEVEN



ASPECTS OF SEPARATION

After a brief discussion on the different types of divorce and their direct or indirect impacts on the mutual relationship between couples, we will now discuss the legitimate persons that have the power of separation. No doubt, there are some widespread misunderstandings regarding this issue - not only amongst uneducated people, but also amongst those who claim to have a better understanding of the religion too, as they think that only the husband has the power to practice divorce under the Islamic jurisprudence and for a wife, there is no way out regardless of the situation inside the home.

Let's see the facts regarding this issue under the shade of Islamic jurisprudence.

Husband:

Primarily, a husband has the power to divorce his wife legally. Addressing husbands, Almighty Allah says:

﴿ يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ ﴾¹

[O My Beloved Prophet! When you people want to divorce your wives, then divorce them during their Iddah.....]

Talking on the issue of Iddah, Allah, the Exalted is mentioning husbands for giving divorces to their wives.

﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ

تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا ﴾

[O' Believers! When you marry Muslim women, and if you divorce them before having any marital relationship with them, then there will be no Iddah that you would count for them.]

Also, our Beloved Prophet (Peace and Blessings be upon him) approved this right of a divorce for the husband and his companions have followed him in reiterating it during their reigns.

Wife:

A wife is also allowed to practice the right of divorce with certain aspects:

a. If the husband has passed his right of divorce to his wife clearly.

In such a case, she will have the right to divorce herself strictly within the parameter he has set for her.

1. Holy Qur'an, Chapter: 65, Verse: 1

2. Holy Qur'an, Chapter: 33, Verse: 49

As for example, if a husband says to his wife, "I have given you the right to decide for yourself," and she replies: "yes, I divorce myself as a separative divorce (رجعى), it would be regarded as valid.

b. If he says: "You may become divorced whenever you wish," then it would be considered valid, accordingly. 1

This authorization is based on the direction of Allah the Exalted to his beloved Prophet Muhammad (Peace be upon him) regarding his wives, as He said:

﴿ يَا أَيُّهَا النَّبِيُّ قُلْ لِّأَزْوَاجِكَ إِن كُنْتُنَّ تُرِدْنَ الْحَيَاةَ الدُّنْيَا وَزِينَتَهَا،

فَتَعَالَيْنَ أُمَتِّعْكُنَّ وَأُسَرِّحْكُنَّ سَرَاحًا جَمِيلًا ﴾ 2

[O' Beloved Prophet! Tell your wives, if they desire the life of this world and its glitters, then come, I will provide for your enjoyment and set you free in a pleasant manner.]

After getting this clear direction, our Beloved Prophet (Peace and Blessings be upon him) contacted the mother of Muslims, Sayyeda Aisha (May Allah be pleased with her) and said to her:

﴿ إِنِّي ذَاكِرٌ لِّكَ أَمْرًا، فَلَا عَلَيْكَ أَنْ لَا تَعْجِلِي حَتَّى تَسْتَأْمِرِي أَبَوَيْكَ

ثُمَّ قَالَ: إِنَّ اللَّهَ عَزَّوَجَلَّ قَالَ: يَا أَيُّهَا النَّبِيُّ قُلْ لِّأَزْوَاجِكَ فَقُلْتُ: فِي أَيِّ هَذَا

أَسْتَأْمِرُ أَبَوَيَّ؟ فَإِنِّي أُرِيدُ اللَّهَ وَرَسُولَهُ وَالذَّارَةَ الْآخِرَةَ ﴾ 3

[" I am telling you something, there is nothing wrong if you do not respond to me quickly and wish to seek the permission from your parents....."

1. See, Bahar-e-Shariat, Vol: 8, Page: 26-27

2. Holy Quran, Chapter: 33, Verse: 28

3. Muslim, Vol: 10, Page: 66, M

He then said, "Allah has revealed...." I replied, "In this matter should I seek the permission of my parents? I prefer Allah, His Prophet, and the Hereafter..."]

Mutual Understanding (خلع):

"Khula is derived from the Arabic language, which means "giving up." Here, it is used as a legal terminology to define a way of separation in exchange for material means given to the husband by his wife.

As an example, if a husband says to his wife, "I have done Khula from you in exchange for such amount," the wife must accept it saying, "I have accepted it."

In "Khula," a clear acceptance of the deal by the wife is legally required. Without it, the "Khula" is not regarded as valid.

This way of separation is supported by the basic permission of Almighty Allah and practice of our Beloved Prophet (Peace be upon him). Allah, the Exalted says:

﴿ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ ۖ ﴾ 1

[If you indeed fear that they would be unable to keep the limited ordained by Allah, there is no blame on either of them if she gives something in exchange for her freedom.]

This option was physically practiced by our Beloved Noble Prophet (Peace and Blessings of Almighty Allah be upon him) regarding the case of the wife of Sabit bin Qais, as she informed him saying:

﴿ يَا رَسُولَ اللَّهِ! وَاللَّهِ مَا أَعْتَبُ عَلَى ثَابِتٍ فِي خُلُقٍ وَلَا دِينٍ، وَلَكِنِّي أَكْرَهُ الْكُفْرَ فِي الْإِسْلَامِ، فَقَالَ: أَتُرَدِّينَ عَلَيْهِ حَدِيثَهُ؟ قَالَتْ: نَعَمْ، قَالَ: يَا ثَابِتُ! أَقْبِلِ الْحَدِيثَ وَطَلِّقْهَا تَطْلِيقَةً 1﴾

[O' Prophet of Allah! By Allah, I have no complaints about the behavior of Sabit and his beliefs, but I do not like the devaluation after having Iman. He said: Were you willing to return him his garden? She replied, yes. He then directed her husband saying, O' Sabit! Accept the garden and divorce her once.]

The specification of "material means" as religious scholars have described is that whatever may be accepted for Dowry (مهر) would be acceptable as "material means" in the process of Khula.

JANNATI KAUN?

Cursing (لعان):

Literally, "Le'aan" means turning the Mercies and Blessings of Almighty Allah away from someone. However, in the context of divorce, according to Hanafi school of Islamic jurisprudence, it means "reiterating witness in belief along with cursing from the husband and anger from the wife. 2

The process of "Le'aan" is sought only for two reasons:

- Allegation of a husband to his wife for something that requires the punishment of adultery.
- Denial of the husband for being the biological father of the child or pregnancy.

1. Sunan Baihaqi, Vol: 11, Page: 177

2. See, Fiqhul Islami, Vol:7, Page:556

Legality of "Le'aan" for the above two serious issues is based on the instruction of the Holy Quran. Once, Shaikh Hilal bin Umayya (May Allah be pleased with him) came to the Prophet of Almighty Allah (Peace be upon him) accusing his wife of a shameful act. The Prophet (Peace be upon him) asked:

﴿ اَلْبَيِّنَةُ أَوْ حَدٌّ فِي ظَهْرِكَ؟ فَقَالَ: يَا نَبِيَّ اللَّهِ! إِذَا رَأَى أَحَدُنَا عَلَى امْرَأَتِهِ رَجُلًا يَنْطَلِقُ، يَلْتَمِسُ الْبَيِّنَةَ، فَجَعَلَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يُكَرِّرُ ذَلِكَ، فَقَالَ هِلَالٌ: وَالَّذِي بَعَثَكَ بِالْحَقِّ نَبِيًّا إِنِّي لَصَادِقٌ، وَلَيَنْزِلَنَّ اللَّهُ مَا يُبْرِئُ ظَهْرِي مِنَ الْحَدِّ فَنَزَلَتِ الْآيَاتُ ﴾ 1

[Show a witness or get ready for a punishment with a stick. Shaikh Hilal said, "O' Prophet of Allah! When a person amongst us watches someone on his wife, how could he go out looking for a witness?" But the Prophet (Peace be upon him) kept demanding. Then, Shaikh Hilal said: "By He who sent you as Prophet with righteousness, I am telling the truth and Allah the Exalted will reveal something that will save my back from getting the punishment with a stick."]

After that, the following verses were revealed upon the Prophet (Peace be upon him):

﴿ وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَدَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ ه وَالْخَامِسَةُ أَنَّ لَعْنَتَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ ه وَيَذَرُوا عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعُ شَهَدَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ ه وَالْخَامِسَةَ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ ﴾ 2

1. Bukhari, Vol: 4, Page: 1772, M

2. Holy Quran, Chapter: 24, Verse: 6-8

[For those who accuse their wives and have no witnesses except themselves, one of their evidence is bearing witness by Allah four times that he is telling the truth. And the fifth oath is that he invokes the curse of Allah on himself if he is amongst the liars. However, the punishment of the wife would be averted if she bears witness four times by Allah that he is telling a lie. And on the fifth time, she solemnly invokes the wrath of Allah upon herself if he is telling the truth.]

According to the above process of "Le'aan" both husband and wife have followed the instructions. Later on, our Beloved Prophet (Peace be upon him) exhorted both of them about Hereafter and separated them from each other, establishing the lineage of their child with his mother rather than with his father. ¹

Because of the sensitiveness of the issue, in order to initiate "Le'aan," its pre-requisites must be met positively. Our scholars have successfully summarized them all.

These are as follows:

- A. Their marriage must be legally valid.
- B. The marital relationship must still be intact.
- C. Both of them must be free.
- D. Both of them must be sane.
- E. Both of them must be adults.
- F. Both of them must be Muslims.
- G. Both of them must be able to talk.
- H. Neither of them should have been punished earlier in an allegation case.
- I. Husband has not provided witnesses.

1. See, Bukhari, Vol: 4, Page: 1772

- J. Wife has denied committing adultery.
- k. An allegation of adultery must have been made on the wife, or the husband has denied fatherhood of the child.
- L. The allegation must have been established in an Islamic country.
- M. Wife requests for "Le'aan" before a Muslim judge.
- N. Husband accepts his allegation or two witnesses affirm it. 1

As we discussed earlier, the separation due to "Le'aan" would be specified as a Separable Divorce (بائن).

Swearing (إيلاء) :

Literally, "Ielaa" means "swearing." However, here it has an additional meaning: "swearing by Almighty Allah, or His attributes or vow or based-on-condition divorce that one will not get close to his wife for a specific period of time.

Historically, it has been recorded that people during the period of ignorance used to swear by Almighty Allah to not have marital relationship with their wives for years, trying to give their wives a hard time.

﴿ قَالَ ابْنُ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا كَانَ إِيْلَاءُ أَهْلِ الْجَاهِلِيَّةِ السَّنَةِ وَالسَّنَتَيْنِ ﴾ 2

[Shaikh Ibn-e-Abbas (May Allah be pleased with them) said: Ielaa of the people durin the period of ignorance was for a year or two...]

1. See, Bahar-e-Shariat, Vol: 8, Page: 111

2. Mojam Kabeen Tabrani, Vol: 11, Page: 158

But Allah the Exalted has fixed it to four months only.

﴿لِّلَّذِينَ يُؤْلُونَ مِن نِّسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِنْ فَاءَ وَ فَإِنَّ اللَّهَ غَفُورٌ رَّحِيمٌ هَ وَإِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ﴾ 1

[For those who swear for not getting close to their wives, a waiting of four months is ordained; if they return during that time, Allah is Oft-Forgiving and Most Merciful. However, if their intention for divorce is firm, Allah hears and knows all things.]

Teaching upon this topic, scholars have divided it into two groups:

- a. Swearing for four months.
- b. Swearing for forever.

If one swears to not get close to his wife for up to fourth months, but does not keep his swear and gets close to her, then he must pay a ransom. However, if he does not have any marital relationships with her for fourth months or more, then she would be declared as divorced with a "separable divorce" (بائن). 2

However, if one swears to not get close to his wife forever and does not have any marital relationship with her for fourth months, then she would be divorced. Later if he remarries with her and does not have marital relationship for fourth months, she would be divorced again. Likewise, the same would apply for a third time, too. However, after three divorces and her marriage with someone else, if he remarries the her again, then his swearing for forever will have no validity. 3

1. Holy Qur'an, Chapter: 2, Verse: 226

2. See, Tahfatul Fuqaha Vol: 2, Page: 203

3. See, Badae, Vol: 3, Page: 260

Disappearance of the Husband:

With the marriage, a couple becomes close to each other and also shares their happiness and grievances. Allah the Exalted says:

﴿ هُنَّ لِبَاسٌ لَّكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ ﴾ 1

[They are garments for you and you are garments for them.]

Therefore, it is not fair for a wife to have her husband disappeared for a long period of time and for his whereabouts to be left in total darkness. Furthermore, Legally the husband is responsible for fulfilling every single need of his wife from food, dress and to her shelter. In his absence, how could she survive?

Earlier, scholars of Hanafi school of jurisprudence had concluded their research with the solution of letting the wife wait for her husband till his biological age reaching ninety years or his near colleagues have died, then he would be declared dead.

However, scholars later adopted the solution given by the Maliki school of Islamic jurisprudence, which is much more suitable and easier for the wives. According to them, when a husband seems lost for a long time, his wife should go to the Islamic Judge (قاضى) and explain to him the case. The judge will ask her to wait for four years. During this period a serious search campaign to attain information on his whereabouts must be launched. Failing to find anything, she should appear to the judge again.

1. Holy Quran, Chapter: 2 , Verse: 187

Then, the judge will make the final verdict and declare him dead. Then she will have to complete her Iddah for a dead husband and retreat from the marriage contract that binds her to him. 1

This solution is based on the opinion of Shaikh Umar (May Allah be pleased with him) as narrated by Shaikh Said bin Musayyab that Shaikh Umar (May Allah be pleased with him) said:

﴿ أَيَّمَا امْرَأَةٍ فَقَدَتْ زَوْجَهَا فَلَمْ تَدْرِ أَيْنَ هُوَ فَإِنَّهَا تَنْتَظِرُ أَرْبَعَ سِنِينَ ثُمَّ تَعْتَدُ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا ثُمَّ تَحِلُّ ۝ 2

[Any woman who has lost her husband and does not know of his whereabouts should wait for four years. After that, she should complete her Iddah of four months and ten days for a dead husband. She is then allowed to get married to someone else.]

Defect in Husband (عنين):

Marriage is meant to bring a successful pleasure in life, based on love, respect, and mutual understanding. However, if the husband is not perfect, physically or medically, then the relationship between them would naturally become strained - and thus, as a result, the marriage may not result in pleasure.

Because of this fact, scholars of Islam have unanimously decided that if the husband is medically not able to have sexual relationships with his wife, then mandatory separation between them is the only solution through a Muslim judge.

1. Fatawa Barkatia Page: 162

2. Moatta Imam Malik, Vol: 3 , Page:199

Allah the Exalted says:

﴿ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِّتَعْتَدُوا ﴾ 1

[And do not keep them to give them a hard time.]

Prior to the separation, the Muslim judge should give the husband one complete year to have this problem fixed. However, if this extension does not restore his necessary required capabilities, then the judge should issue an order of separation between them. This solution is based off of what Shaikh Umar (May Allah be pleased with him) advised as he said:

﴿ يُؤَجِّلُ سَنَةً، فَإِنْ قُدِرَ عَلَيْهَا وَلَا فُرُقَ بَيْنَهُمَا..... ﴾ 2

[A sexually-defected person will be given a year for full healing. During this, if he has recovered then fine, otherwise, both will be separated.]

JANNATI KAUN?

Simulating wife with an unlawful woman (ظهار):

"Dehaar" means simulating the wife by her husband with a lady whose marriage with him is legally forbidden, or with any part of her body which is not allowed to be exposed to him.

For example, this includes saying to the wife, "You are like my mother" or "Your neck and head are like the back of my mother" etc.

In the Pre-Islamic period of Ignorance, "Dehaar" was practiced in order to make this wife forbidden forever. Once, a lady named Khaula was said the same by her husband Shaikh Aas (May Allah be pleased with them).

1. Holy Quran, Chapter: 2, Verse: 231

2. Sunan Baihiqi, Vol: 10, Page: 527

She rushed to the Prophet of Allah (Peace and Blessings be upon him) and informed him of the situation. Later, a revelation regarding its fair solution came to him as Allah the Exalted says:

﴿الَّذِينَ يَظْهَرُونَ مِنْكُمْ مَنْ نَسَاءَهُمْ مَا هُنَّ أُمَّهَاتُهُمْ ۚ إِنَّ أُمَّهَاتُهُمْ إِلَّا اللَّائِي وَلَدَنَّهُمْ ۚ وَإِنَّهُمْ لَيَقُولُونَ مُنْكَرًا مِّنَ الْقَوْلِ وَرُؤَا ۚ وَإِنَّ اللَّهَ لَعَفُوءٌ غَفُورٌ ۝۱﴾

[Amongst you, those who practice the tradition of "dhihaar," their wives cannot be their mothers. None can be their mothers except those who gave them birth. In fact, they use these words as inadequate and false. However, Allah is All-Pardoning, All-Forgiving.]

Though these types of statements do not make one's wife forbidden forever in Islam, it would have other repercussions on the relationship between couples based on the intentions of the husband.

If it is intended to be a divorce, then there will be a Separable Divorce (بائن), and if it is for a "Dhihaar" then it would be regarded as the same.

However, if it is with the intention of making her forbidden, the rule of "Ielaa" would be applied, but if there is no particular intention behind this statement, then it would be regarded null. 2

As I mentioned, if this was made for the intention of "Dhihaar" then one must give a ransom in order to normalize the mutual marital relationship. However, if he has done something that usually been sought between a husband and a wife before giving ransom, then he should ask Allah's forgiveness.

1. Holy Quran, Chapter: 58, Verse: 2

2. See, Jauhara Nayyara, Chapter of Dhihaar

Regarding the ransom, the Holy Quran guides us, saying:

﴿ وَالَّذِينَ يُظَاهِرُونَ مِنْ نِسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا، فَتَحْرِيرُ رَقَبَةٍ مِنْ قَبْلِ أَنْ يَتَمَآسَا ۚ ذَٰلِكُمْ تُوَعُّظُونَ بِهِ ۚ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ ۚ فَمَنْ لَمْ تَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ مِنْ قَبْلِ أَنْ يَتَمَآسَا ۚ فَمَنْ لَمْ يَسْتَطِعْ فَاِطْعَامُ سِتِّينَ مِسْكِينًا ۚ ذَٰلِكَ لِتُؤْمِنُوا بِاللَّهِ وَرَسُولِهِ ۚ وَتِلْكَ حُدُودُ اللَّهِ ۚ وَلِلْكَافِرِينَ عَذَابٌ أَلِيمٌ ۝۱ ﴾

[Those who simulate their wives with their forbidden women, then wish to go back on the words they uttered, should free a slave before they touch each other. This is what you advised for, and truly Allah is well-known with what you do. And if one cannot free a slave, he should fast for two months consecutively before they touch each other. But if one is unable to do so, he should feed sixty poor persons. It is that you may show your faith in Allah and His Prophet. Those are limits sets by Allah. For those who reject, there is a grievous punishment.]

For feeding sixty poor persons, one must feed them twice a day or a single poor up to sixty days based on double meals daily. 2

As an another option, one may give something equal to the sixty Zakat-ul-Fitr. Based on different critaria, one Zakat-ul-Fitr is equal to 5.45 labs of wheat or wheat flour, or 10.90 labs of dates, large raisin, or barley or its flour according to the modern measurement. 3

1. Holy Quran, Chapter: 58, Verse: 3-4

2. See, Bahar-e-Shariat, Vol:8, Page: 106

3. See, Tafseer-e-Baidhawi, Vol: 5, Page: 307

CHAPTER EIGHT



AFTER THE DIVORCE

Getting together, rather than separating away, is always appreciated in our religion. Once a couple gets united through marriage, they should keep this new relationship healthy with love, reverence, and mutual understand throughout their stay in this world.

However, due to some unusual circumstances, if the relationship between them deteriorates and there is no possible way left for them to live together, then both would be separated as a last option, based on the guide line set up by Islamic theology.

Here, we will discuss the aftermath of the divorce and its necessary aspects.

IDDAH:

A specified waiting period for a divorced woman before having another marriage is called the "Iddah." This period varies from one woman to the other, based on individual circumstances. There are three types of Iddah:

[i] With Menstrual Period:

Divorced women who still go through the menstrual periods as a routine, must wait and complete three cycles as an "Iddah" for them.

Allah the Exalted says:

﴿وَالْمُطَلَّاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ ۚ﴾ 1

[Divorced women must wait concerning themselves for three monthly periods.]

It should be kept in mind that the Holy Quran mentions the word, "Quru." In the Arabic language, this word has two meanings; "menstrual period" and "cleansing period." However, the first meaning is the preferred one here in the central context of Iddah. Our Beloved Prophet (Peace be upon him) also used the word "Quru" and its other derived formats in his sayings to refer to "menstrual periods."

For example, the Prophet (Peace be upon him) said to a lady passing through her period:

﴿دَعِيَ الصَّلَاةَ أَيَّامَ أَقْرَائِكَ﴾ 2

[Give up your prayers during your periods.]

1. Holy Quran, Chapter: 2, Verse: 228

2. Dar Qutni, Vol:1, Page: 220

Three periods are the duration for them as it is mentioned in the Holy Quran. Therefore, if one gives divorce to his wife during her period, though it is not appreciated, then the prevailing period would not be counted. Otherwise, there will not be a complete three which is the basic requirement. 1

[ii] With delivery:

Pregnant divorced women must wait until their deliveries as their required Iddah period.

The Holy Quran says:

﴿ وَأُولَاتُ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ ﴾ 2

[For pregnant women, their Iddah is till they deliver their babies.]

Whether the pregnant woman was divorced or her husband died, her Iddah in both situations is dependent upon her delivery.

It is recorded that upon the revelation of the above verse of the Holy Quran, someone asked:

﴿..... إِنَّهَا الْمُطَلَّقةُ ثَلَاثًا أَوْ لِمَتَوَفَّى عَنْهَا رَوْجُهَا؟ فَقَالَ رَسُولُ اللَّهِ

صلى الله عليه وسلم : هِيَ لِلْمُطَلَّقةِ وَالْمَتَوَفَّى عَنْهَا رَوْجُهَا ﴾ 3

[..... Is this for divorced women with " strongest divorce" (مفلاظة) or for the one whose husband died? Replying to it, Our Beloved Prophet (Peace and Blessings of Almighty Allah be upon him) said: This is for the divorced and the widow both.]

1. See, Bahar-e-Shariat, Vol:8, Page: 123

2. Holy Quran, Chapter: 65, Verse: 4

3. Sunan Dar Qutni, Vol: 4, Page: 26

[iii] With months:

For divorced women who have not their menstrual periods in their routines, they must complete their Iddah by counting the months.

In this category, there are three types of women:

- a. Still too young to have menstrual periods.
- b. Too old to have menstrual periods.

According to the scholars of Hanafi School of Islamic jurisprudence, when a woman reaches 55 years of age, she would be declared "Aaisa," a terminology used to describe a woman whose menstrual periods have stopped due to her old age. Allah the Exalted says:

﴿ وَالَّذِي يَأْتِي مِنَ الْمَحِيضِ مِنْ نَسَائِكُمْ إِنْ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ
وَالَّذِي لَمْ يَحِضْنَ ۚ ﴾¹ JANNATI KAUN?

[Such of your women as have passed the age of monthly courses, for them the prescribed period, if you have any doubts, is three months and for those who have yet to start periods also.]

Therefore, the "Iddah" for both types in the above mentioned categories is three months.

c. Widows.

The required "Iddah" for un-pregnant widows is four months and ten days. Allah the Exalted says:

﴿ وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ
أَشْهُرٍ وَعَشْرًا ۚ ﴾²

1. Holy Quran, Chapter: 65, Verse: 4

2. Holy Quran, Chapter: 2, Verse: 234

[Amongst you who die and leave behind widows, they shall wait concerning themselves for four months and ten days.]

[iv] No Iddah:

There is no Iddah for a woman who has been divorced before having sexual intercourse with her husband or getting a chance to be alone with him in a place where nothing prevents them from having sexual intercourse.

Explaining this condition, Allah the Exalted says:

﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا ۚ ۱ ﴾

[O' you who believe! When you marry Muslim women then divorce them before you have touched them, there is no period of Iddah you have to count.]

REQUIREMENTS OF IDDAH:

As every single step of our daily life has been accurately accustomed with introduction of rules and regulations, the concept of Iddah was also bounded with certain conditions. The primary aim behind these rules is to promote justice amongst members of the society and preserve the rights of women in favor of them with dignity and respect.

In this section, we will discuss some necessary conditions of Iddah, based on the descriptions of authentic Muslim scholars.

[i] Forbidden Proposing:

Proposing to a divorced woman during her Iddah in a clear word or showing some sort of interest for her is strictly forbidden. During her Iddah, a woman is still considered connected with her husband. Therefore, proposing to her in this time will be rightly interpreted as a suspicious action.

Our Beloved Prophet (Peace be upon him) said:

﴿مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ فَلَا يَقِفَنَّ مَوَاقِفَ التَّهْمِ﴾¹

[One who believes in Allah and in the Last Day should not be in a place of suspicion.]

However, passing betrothal signs to a widow is allowed. This is because legally going out for a widow during days of her Iddah is allowed, while for a divorced woman, it is not allowed for her to go out during days or nights with her Iddah. 2

And Allah the Exalted says:

﴿وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خُطْبَةِ النِّسَاءِ أَوْ أَكْنَنْتُمْ فِي أَنْفُسِكُمْ﴾³

[And there is no blame upon you if you pass your interest of marriage to women or hold it in your hearts.]

[ii] Forbidden Marriage:

Performing a marriage with women who are passing through their Iddah is strictly forbidden.

Allah the Exalted says:

1. Maqasid-e-Hasana, Vol:1, Page: 411

2. See, Bada'e, Vol: 3, Page: 297

3. Holy Quran, Chapter: 2, Verse: 235

﴿ وَلَا تَعْرِمُوا عُقْدَةَ النِّكَاحِ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ ﴾ 1

[And do not tie a knot till the term prescribed (Iddah) is fulfilled.]

[iii] Forbidden to Go Out:

A divorced woman is supposed to stay at her husband's house during her Iddah.

Allah the Exalted says:

﴿ أَسْكِنُواهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وَجْدِكُمْ ﴾ 2

[Keep them where you live according to your means.]

Going out of the house without a desperate need is forbidden for every type of divorced woman - whether with Retreatable, Separable, or Strongest Divorce.

Regarding this rule, Allah the Exalted says:

﴿ لَا تَخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيَّنَةٍ ﴾ 3

[Do not turn them out of their houses, nor shall they leave, except in case they are guilty of some open lewdness.]

However, as it was mentioned earlier, going out for a window during her Iddah in the days only is allowed with the aim of arranging her means to survive, if the left-over property of her husband is not enough to cover her usual expenses. Otherwise, as Muslim scholars have said, going out for a widow during her Iddah is not allowed either. 4

1. Holy Quran, Chapter: 2, Verse: 235

2. Holy Quran, Chapter: 65, Verse: 6

3. Holy Quran, Chapter: 65, Verse: 1

4. See, Bahar-e-Shariat, Vol: 8, Page: 133

It must be kept in minds that these conditions are for usual circumstances only; however, in case of emergencies like for medical treatments, or if the house is burning down, etc., then it is allowed for them to go out without any restrictions. 1

[iv] Providing Expenses:

During the period of Iddah, women should stay in the houses of their husbands. According to the law, husbands are responsible for providing every single comfort including food, shelter, dresses, etc.

Allah the Exalted says:

﴿وَإِنْ كُنَّ أَوْلَاتٍ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ﴾ 2

[And if they are pregnant, then spend on them till they deliver their babies.....]

[v] Forbidden to Adorn:

Adult women are not allowed to have adorning makeup during their time of Iddah.

Narrated by Sayyeda Umm-e-Salama (May Allah be pleased with her):

﴿إِنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى الْمُعْتَدَّةَ أَنْ تَخْتَضِبَ بِالْحِجَاءِ﴾ 3

[Indeed, the Prophet (Peace be upon him) forbids from adorning with Mehndi during the Iddah.]

In one of the popular statements regarding this topic, our Beloved Prophet (Peace be upon him) said:

1. See, Badae, Vol: 3, Page: 297

2. Holy Quran, Chapter: 65, Verse: 6

3. Badae, Vol: 3, Page: 297

﴿ لَا يَحِلُّ لِمَرْأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ تُحْدَّ عَلَى مَيِّتٍ فَوْقَ ثَلَاثٍ إِلَّا عَلَى زَوْجٍ فَإِنَّهَا تُحْدُّ عَلَيْهِ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا ﴾ 1

[A woman who believes in Allah and in the Last Day is not allowed to mourn more than three days except for her husband for four months and ten days.]

For a clearer wording, one may refer to the following Hadith:

﴿ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: أَلْمُتَوَفَّى عَنْهَا زَوْجُهَا لَا تَلْبِسُ الْمُعْصَفَرَمِينَ الثِّيَابَ وَلَا الْمُمَشَّقَةَ وَلَا تَخْتَضِبُ وَلَا تَكْتَحِلُ ﴾ 2

[Narrated by the Beloved Prophet (Peace and Blessings of Almighty Allah be upon him) as he said: A women whose husband dies should not wear a colorful dress, or put on Mehndi, or put on eyeliner.]

JANNATI KAUN?

REMARRIAGE:

Though our religion introduces a way out of the marriage contract in unusual circumstances due to a deteriorating marital relationship, it does not close the door of re-establishing relations between couples forever. Under the shade of authentic Islamic resources, scholars have discussed this important issue in detail and brought forward the solutions of every aspect systematically.

In this section, we will see the rules and regulations set up by the Islamic Jurisprudence for reconnecting relationships between previously wedded couples with all discussed criterias.

1. Bukhari. Vol: 1, Page: 429

2. Nesai Kubra, Vol: 3, Page: 395

[i] Retreatable Divorce (رجعى):

After giving a Retreatable Divorce, re-establishing marital relationships is very easy. It can be done either by using verbal words consisting of reconciliatory statements or through actions signaling the beginning of marital relations again.

Legally, in this type of divorce, there is no need to seek the consent of the wife. However, the best way of retreating is to do it in words before two just witnesses and the husband should inform his wife about it.

Retreating is always appreciated if the husband feels to have better understanding between them in the future. Allah the Exalted says:

﴿ وَبَعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا ۝ 1 ﴾

[And their husbands have the right to take them back in that period, if they wish for reconciliation.]

Once, the son of Shaikh Umar (May Allah be pleased with them all) divorced his wife during her period. Upon listening to this, our Beloved Merciful Prophet (Peace and Blessings be upon him) said:

﴿ مَرَّةً فَلْيُراجِعْهَا حَتَّى تَحِيضَ حَيْضَةً أُخْرَى فَإِذَا طَهَرَتْ فَإِنْ شَاءَ طَلَّقَهَا ۝ 2 ﴾

وَأِنْ شَاءَ أَمْسَكَهَا..... 2

[Tell him to retreat till she has another period. After she completes it, if he wants to divorce her and if he wants to keep her as his wife.....]

1. Holy Quran, Chapter: 2, Verse: 228

2. Sunan Nesai Sughra, Vol: 6, Page: 522

[ii] Separable Divorce (بائن):

After giving a separable divorce, one cannot re-establish his relationships without having a normal process of regular marriage.

In this situation, like any normal marriage, obtaining the consent of the woman, the presence of two witnesses, and a dowry are a must.

A husband can remarry a woman whom he divorced with a Separable Divorce (بائن) during her Iddah or after her Iddah. 1

[iii] Strongest Divorce (مغلظة):

This is the worst of all divorces from the perspective of re-marriage. A husband who gives his wife this kind of divorce is not able to remarry her in a normal way. Before having a new marriage with all its necessary requisites, she must go through "Halala."

Halala (حالة):

Before having a remarriage with the previous husband who gave her a Strongest Divorce (مغلظة), the wife first performing a marriage with someone else is called Halala.

There are two perspectives of Halala:

a. If the divorced woman with the "Strongest Divorce" has not had physical, sexual contact with her husband,

1. See, Bahar-e-Shariat, Vol: 8, Page: 69

See, Fiqhul Islami, Vol: 7, Page: 462

then without having Iddah she can marry anyone else. Then the new husband will divorce her after having intercourse. Later, she must complete her Iddah and then marry again with her old husband.

b. If the divorced woman with the "Strongest Divorce" has had physical, sexual contact with her husband, then she must complete her Iddah. She will then marry someone else. Later, he will divorce her. After passing through her Iddah, she may marry again with her old husband.

Giving direction for this type of situation, Allah the Exalted says:

﴿ فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ ﴾ 1

[So if a husband divorces his wife, he cannot, after that, remarry her until after she has married another and he has divorced her.]

BIBLIOGRAPHY



JANNATI KAUN?

1. QURANIC COMMENTRY

1. Al Jame Le Ahkamil Quran: Shaikh Abu Abdullah Muhammed bin Ahmed Qurtubi, Date: No, Edition: No, Darul Kutub Ilmia, M
2. Jame ul Bayan: Shaikh Abu Jafar Muhammed Tabri, Date: 2003, Edition: No, Darul Kutub Ilmia, M
3. Khazain-ul-Irfan: Shaikh Syed Muhammed Naeemuddin Edition: No, Date: No, Press:No, Pub: Farid Book Depot
4. Ruhul Maani: Shaikh Allama Mehmood Aalosi, Edition:No, Date:No, Pub: No, M
5. Tafseer Baidhawi: Shaikh Abdullah bin Umar Baidhawi, Edition: No, Date: No, Darul Fikr

2. HADITH

6. Bukhari: Imam Muhammed bin Ismail Bukhari, Date: No, Edition: No, Dar Ihy-e-Turas, M
7. Bukhari: Imam Muhammed bin Ismail Bukhari, Edition: 1, Date: No, Farid Book Depot Delhi
8. Muslim: Imam Muslim bin Hajjaj, Date: 1997, Edition: 7, Press: Romi Publications, Farid Book Stall
9. Muslim: Imam Muslim bin Hajjaj, Edition: No, Date: 1992, Pub: Darul Kutub Ilmia, M
10. Tirmidhi: Shaikh Muhammad Isa, Date: 1994, Edition: No, Darul Kutub Ilmia, M
11. Abu Dawood: Shaikh Abu Dawood Sulaiman bin Ashas, Date: No, Dar Ihy-e-Turas Arabi, M
12. Jame-ul-Masaneed wal Maraseel: Imam Jalaluddin Suyuti, Date: 1994, Edition: No, Darul Fikr, M
13. Ibn-e-Maja: Shaikh Imam Muhammed bin Yazid, Date: No, Edition: No, Dar Ihy-e-Turas Arabi, M
14. Muatta: Imam Malik bin Anas, Date: 1988, Edition: No, Pub: No, M
15. Sunan Baihiqui: Imam Abu Bakr Ahmed Baihiqui, Date: No, Edition: No, Darul Fikr, M
16. Talkhees-ul-Habeer: Allama Shaikh Ibn-e-Hajr Asqlani, Date: 1964, Edition: No, Madina, M
17. Dar Qutni: Shaikh Ali Bin Umar Dar Qutni, Date: 2003, Edition: No, Darul Kutub Ilmia, M
18. Saheeh: Shaikh Abu Hatim Muhammed bin Habban, Date: No, Edition: No, Darul Fikr Bairut, M

19. Musnad Ahmed: Imam Ahmed bin Hanbal, Date: No, Edition: No, Dar-o-Ihya-e-Turas Arabi, M
20. Kanzul Ummal: Shaikh Ali Muttaqui Hindi, Date: No, Edition: No, Press: No, M
21. Musanaf Ibne-Abi-Shaiba: Shikh Abdullah bin Abi Shaiba, Date: No, Ediation: No, Darul Fikr, M
22. Majmauz Zawaid: Shaikh Noruddin Haisimi, Date:2000, Edition: No, Darul Kutub Ilmia, M
23. Musnad Imam Azam: Imam Abu Hanifa Noman bin Sabit Date: No, Edition: No, Darul Kutub Ilmia, M
24. Sahih Ibn-e-Khuzaima: Shaikh Muhammed bin Ishaq Date: No, Edition: No, Maktabul Islami, M
25. Mishkaat: Shaikh Allama Waliuddin Tabrezi, Date:1991, Edition: No, Darul Fikr, M
26. Mustadrak: Shaikh Muhammed bin Abdullah Hakim Nisapuri, Date: 1990, Edition: No, Darul kutub Ilmia, M
27. Musnad Bazzar: Shaikh Ahmed bin Amr Bazzar, Date: 2003, Edition: No, Press: No, Maktabatul Oloom wal Hekam, M
28. Sunan Nesai Kubra: Shaikh Imam Ahmed bin Ali Nesai, Date: 1986, Edition: No, Darul Fikr, M
29. Sharh-e-Maani: Imam Ahmed bin Muhammed Tahavi, Date: No, Edition: No, Darul Kutub Ilmia, M
30. Maraseel: Imam Abu Dawood Sulaiman bin Ashas, Chapter of Qirat, Date: No, Darul Barudi, M
31. Musannaf Abdur Razzaq: Shaikh Abdur Razzaq Sanani, Date:1995, Edition: No, Darul Fikr, M
32. Mujam Kabeer: Shaikh Sulaiman bin Ahmed Tabrani, Date:No, Edition:No, Muassatur Risala, M

33. Asaar: Imam Muhammad bin Hasan Shaibani, Edition:1,
Date:1407 Hijri, Edaratul Quran, Karachi

3. ISLAMIC LAW

34. Fath-ul Qadeer: Imam Kamaluddin Ibn-e-Humam,
Edition: 1, Date: 2004, Markaz-e Ahl-e Sunnat
35. Badae-us-Sanae: Imam Alauddin Abu Bakr bin Masood,
Edition: 1, Date: 2004, Markaz-e-Ahlesunnat
36. Fatawa Razwia: Imam Ahmed Raza Khan Fazil Bareilwi,
Edition:2, Date:2003, Markaz-e-Ahlesunnat.
37. Alfiah-ul Islami: Shaikh Dr. Wahba Zuhaili, Edition:3,
Date:1989, Darul Fikr Bairut.
38. Nailul Awtar: Shaikh Muhammed bin Ali Shaukani,
Date: 1994, Edition: No, Darul Fikr Bairut
39. Bahar-e Shariat: Shaikh Sadrus Sharia Amjad Ali,
Edition:No, Date:No, Qadri Kitab Ghar, Bareilly
40. Bahrur Raiq: Allama Shaikh Zainuddin Ibn-e-Nujaim,
Date: 1993, Edition: No, Darul Marifa, M
41. Hidayat: Shaikh Ali Bin Abi Bakr Murqhinani, Date: No,
Edition:No, Darul Kutub Ilmia, M
42. Durr-e-Mukhtar: Shaikh Alauddin Haskafi, Date: 2002,
Edition: No, Durul kutub Ilmia, M
43. Raddul Muhtar: Shaikh Muhammed Ameen Abdeen,
Date: 1995, Edition: No, Darul Fikr, M
44. Inaya: Shaikh Muhammed bin Mhamood, Date:2004,
Edition: No, Barkat-e-Raza Gujrat

45. Lubab: Shaikh Abdul Ghani Maidani, Edition: No, Date: 1997, Darul Marifa, M
46. Tabeenul Haqaiq: Shaikh Abdullah bin Yusuf Zailiee, Edition: No, Date: 1996, Darul Kutub Ilmia
47. Bidaya: Imam Shaikh Ali Murghinani, Edition: No, Date: No, Darul kutub Ilmia
48. Jauhara Naiara: Shaikh Mahmood bin Ahmed bin Maza, Edition: No, Date: No, Pub: No
49. Waqarul Fatawa: Mufti-e-Azam Pakistan Waqaruddin , Edition: First, Date: 1997, Bazm-e-Waqaruddin karachi
50. Fatawa Barkatia: Faqeeh-e-Millat Mufti Jalaluddin, Edition: First, Date: 1998, Kutub Khana Amjadia
51. Tuhfatul Fuqaha: Allama Alauddin Samarqandi, Edition: No, Date: 1993, Darul Kutub Ilmia

5. MISCELLANEOUS

52. At targheeb Fi fazaail-e-amall: Shaikh Umar bin Shaheen, Date: 2004, Edition: No, Darul Kutab Ilmia, M
53. Targheeb wa Tarheeb: Shaikh Munziri, Date: 2003, Edition: No, Darul Kutab Ilmia, M
54. Maqasid Hasana: Imam Muhammed bin Abdul Rahman Sakhawi, Date: No, Edition: No, Darul Kutub Ilmia, M
55. Ziaul Nabi: Pir Karm Shah Azhari, Edition: No, Date: 1402 Hijri, Ziaul Quran Publication



INDEX

A

Aisha, Sayyeda 21,25,34,95
Abdullah bin Umar, Shaikh 36
Acceptance 34,35,37
Abu Lahab 28
Abu Huraira, Shaikh 41
Abdur Rahman, Shaikh 41
Ali, Shaikh 46,49,50,61
Abdullah bin Abbas, Shaikh
47,48,88,107
Abdullah, Shaikh 98
Aos, Shaikh 111
Aaisa 117
Adorn, forbidden 121

B

Benefits of marriage 10
Breastfeeding reward 12
Breastfeeding amnt 26,27,28
Baitul mal 45
Barwa, washique, Shaikh 48

C

Chosing a wife 16
Child intercede 11
Christian 30
Chatting with woman 55
Clear words 90
Clear words, effect of 91

D

Deffinition of marriage 4
 Dowry, mention 41
 Dua for marriage 42
 Dowry 42,69,104
 Dowry, semi-mandatory 43
 Dowry, simple 44
 Dowry, prompt 44
 Dowry, Deferred 44
 Dowry, limits 44
 Dowry, best 45, 46
 Dowry, least 46
 Dowry, similar 46,48
 Dowry, payment 47
 Dowry, system 49
 Dating 53
 Divorce, what is 77
 Divorce, philosophy of 78
 Divorce, legalization of 81
 Divorce, conditions of 82
 Divorce for fun 84
 Divorce, types of 85
 Divorce, Retreatable 86,91
 102,123
 Divorce, Separatable 86,92,
 108,112,124
 Divorce, Strongest 87,90,92,
 116,124,125
 Divorce, ways of 87,88
 Divorce, moderate way 89
 Divorce, innovative 90
 Divorce by word 93
 Divorce by writing 93
 Divorce by signals 94

Divorce by emissary 94
 Divorce by numbers 94
 Divorce by conditions 98,99
 Divorce, purpose of 84
 Divorce, specific condition 85
 Dignity of Husband 65

E

Engagement 56
 Everyone mistake 79
 Expences of divorce lady 121

F

Fatima, Syyeda 49
 fifth wife 33
 Forbidden permanently 19,20
 22,23,24,25
 Forbidden temporarily 29,30

H

Hanafi school 15,84, 109
 Haris, Shaikh 28
 Huzaifa, Shaikh 31
 Husband, rights of 62
 Husband, obedience to 63
 Husband, respect of 65
 Husband, permission of 65
 Housework, share 67
 Halala 96,124
 Husband 101.
 Hilal, Shaikh 105
 Husband, disappear 109
 Husband, defective 110

I

Iddah 86,87,115
 Innovative divorce 90
 Ibn-e-Masood, Shaikh 88
 Ibn-e-Umar, Shaikh 88,98
 Indicative words 91,92
 Ielaa 107,112,120
 Islamic Judge 109
 Iddah with delivery 116
 Iddah with months 117
 Iddah, no 118

J

Jihad 6
 Jew 30
 Justice with wives 72

K

Khutba of marriage 40
 Khalwat-e-Sahiha 47,53
 Khula 103

L

Looking a woman 54
 Looking pre-marriage 57
 Looking a bridegroom 58
 Leaan 104,106

M

Muhammad, the Prophet
 1,4,6,10,83
 Marriage mandatory 8
 Marriage Sunnat 8

Marriage prohibited 9,119
 Marriage disliked 9
 Muslim 30,31,32,84,98
 Madyan 31
 Marriage, elements 34
 Marriage, conditions 35
 Marriage in Masjid 39
 Marriage on Firday 39
 Mamber 45
 Mujahid, Shaikh 47
 Marriage time bond 51
 Monogamy 60
 Marital relations 64
 Marriage contract 85

O

Offer 34,35,37

P

Polygamy 58,59,60
 Privacy of wife 73
 Proposing forbidden 119

Q

Qudama, Shaikh 36
 Quru 115

R

Row of Heaven goes 7
 Relationship with wife 71
 Remarriage 172
 Retreatable divorce 86, 91,
 102, 123

S

Significance of marriage 4
 Saba, Akbani 2
 Sisters in marriage 32
 Sudi, Shaikh 47
 Sabra bin Mabad, Shaikh 52
 Support of wife 69
 Sati System 78
 Sahl, Shaikh 97
 Swearing for divorce 107
 Sad, Shaikh 110

T

Uqba, Shaikh 28
 Umar, Shaikh 31,32,45,61,89,
 110,111,123
 Umm-e-Salama, Syeda 121
 Usama, Shaikh 72

W

Wife, religious 17
 Wife, fertile 18
 Women, forbidden 19,20,22,
 23,24,25
 Women of people of book 31
 Witnesses of marriage 36
 Witnesses, just 40
 Walima 41
 Walima invitation 41,42
 Wife, rights of 68
 Wife, nice treatment of 71
 Wife 101
 Widow 117

Z

Zubair, Shaikh 61
 Zihhaar 111,112
 Zakatul Fitr 113
 Zihhaar ransom 113